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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 103

TWENTIETH CENTURY-FOX FILM CORPORATION, et al., *Petitioners,*

—against—

SAMUEL GOLDWYN, et al., doing business as GOLDWYN PRODUCTIONS, a limited partnership, successors in interest to the plaintiff Samuel Goldwyn Productions, Inc., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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May 20, 1964

INDEX

PAGE

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED 3

THE STATUTES INVOLVED 4

STATEMENT OF THE CASE 5

(A) The Petition and Amended Complaint in *Paramount* 12

(B) The Government's Statements in Pre-Trial Proceedings in *Paramount* 13

(C) The Evidence Introduced by the Government Upon the Trial of the *Paramount* Case 15

REASONS FOR GRANTING THE WRIT 18

Summary of Argument 18

I. May One Who Is Charged with Being a Participant in and Beneficiary of a Conspiracy in an Antecedent Government Action Rely upon such Government Action, under Section 5 of the Clayton Act, to Suspend the Statute of Limitations in a Private Right Action? 20

II. May One Who Is Charged with Being a Participant in and Beneficiary of a Conspiracy in an Antecedent Government Action Claim as Plaintiff in a Private Right Action the Benefits of Section 5 of the Clayton Act when He Offers a Final Decree in a Government Action as *Prima Facie* Evidence? 32

III. Did Petitioners Waive the California One-Year Statute of Limitations, although Pleading it as a Partial Defense, because the District Court Had Previously Granted Petitioners' Motion for Summary Judgment Based on the Three-Year Statute? 40

PAGE

IV. May a Participant in and Beneficiary of a Conspiracy in an Antecedent Government Action Recover Against His Alleged Co-Conspirators? 47

CONCLUSION 54

APPENDIX A 1a-104a

APPENDIX B 1b-13b

APPENDIX C ..... Bound Separately

TABLE OF CASES

American Tobacco Co. v. *United States*, 147 F. 2d 93 (6th Cir. 1944), *affirmed* 328 U. S. 781 48

Asgill v. *United States*, 60 F. 2d 780, 785 (4th Cir. 1932) 24

Bertha Building Corp. v. *National Theatres Corp.*, 269 F. 2d 785, 787 (2nd Cir. 1959), *cert. den.* 361 U. S. 960 ..... 43, 44

Bluefields S. S. Co. v. *United Fruit Co.*, 243 Fed. 1 (3rd Cir. 1917) 53

Buckhead Theatre Company v. *Atlanta Enterprises, Inc.*, 327 F. 2d 365 (5th Cir. 1964) 39

Burnham Chemical Co. v. *Borax Consolidated*, 170 F. 2d 569 41

Craig v. *United States*, 81 F. 2d 816 (9th Cir. 1936), *cert. den.* 298 U. S. 690, *reh. den.* 299 U. S. 620 24

Cromwell v. *County of Sac*, 94 U. S. 351 35

Dextone Co. v. *Building Trades Counsel*, 60 F. 2d 47 (2nd Cir. 1932) 48

Dipson Theatres v. *Buffalo Theatres*, 190 F. 2d 951 (2nd Cir. 1951), *cert. den.* 342 U. S. 926 ..... 31, 40

Eagle Lion Studios v. *Loew's Inc.*, 141 F. Supp. 658 (S. D. N. Y., 1956), affirmed, 248 F. 2d 438 (2nd Cir. 1957), affirmed, 358 U. S. 100 ..... 6, 36, 37, 38

PAGE

Eastman Kodak Co. v. *Blackmore*, 277 Fed. 694 (2nd Cir. 1921) 52

Emich Motors v. *General Motors*, 340 U. S. 558 ..... 19, 34

Emich Motors Corporation v. *General Motors Corp.*, 229 F. 2d 714, (7th Cir. 1956); 15 F. R. D. 354 (N. D. Ill. 1953) 43, 45, 46

Giusti v. *Pyrotechnic Industries*, 156 F. 2d 351 (9th Cir. 1946), *cert. den.* 329 U. S. 787 48

Hoffman v. *Hancock Mut. Life Ins. Co.*, 92 U. S. 161 48

Hoskins Coal & Dock Corp. v. *Truax Traer Coal Co.*, 191 F. 2d 912 (7th Cir. 1951), *cert. den.* 342 U. S. 947 45

Kotteakos v. *United States*, 328 U. S. 750 24

Lawlor v. *National Screen Service*, 349 U. S. 322, 326 35

Leh v. *General Petroleum Corporation, et al.*, 208 F. Supp. 289 (S. D. Cal. 1962), F. 2d (9th Cir. 1964) 27, 28, 29, 42

Marcante v. *United States*, 49 F. 2d 156 (10th Cir. 1931) 24

Momand v. *Universal Films Exchanges*, 43 F. Supp. 996 (D. Mass. 1942), affirmed, 172 F. 2d 37, 48 (1st Cir. 1948), *cert. den.* 336 U. S. 967 ..... 30, 31

Monticello Tobacco Co. v. *American Tobacco Co.*, 197 F. 2d 629 (2nd Cir. 1952), *cert. den.* 344 U. S. 875 .. 39

New Orleans v. *Citizens' Bank*, 167 U. S. 371 35

Northwestern Oil Co. v. *Socony-Vacuum Oil Co.*, 138 F. 2d 967 (7th Cir. 1943), *cert. den.* 321 U. S. 792 ... 49, 50

Paramount Film Distributing Corp. v. *Village Theatre*, 228 F. 2d 721 (10th Cir. 1956) 39

Park Neponset Corporation v. *Smith*, 258 F. 2d 452 (1st Cir. 1958) 39

Partmar Corp. v. *Paramount Corp.*, 347 U. S. 89, 102-03 35

Samuel Goldwyn Pr. v. *Fox West Coast Theatres Corp.*, 146 F. Supp. 905 (N. D. Calif. 1956); 194 F. Supp. 507 (N. D. Calif. 1961); 328 F. 2d 190 (9th Cir. 1964) 2, 9, 21, 22, 25, 35, 42, 49

PAGE

Southern Pacific Railr'd. v. *United States,* 168 U. S. 1, 52 34
Steiner v. *20th Century-Fox Film Corporation,* 232 F. 2d 190 (9th Cir. 1956) 20, 21, 29, 41
Suckow Borax Mines Consol. v. *Borax Consolidated,* 185 F. 2d 196 41
Terry v. *United States,* 7 F. 2d 28 (9th Cir. 1925) 24
Tinsley v. *United States,* 43 F. 2d 890 (8th Cir. 1930) .. 24
United States v. *American Column & Lumber Co.,* 263 Fed. 147 (W. D. Tenn. 1920), *affirmed* 257 U. S. 377 48
United States v. *Gooding,* 12 Wheat. (25 U. S.) 460, 469 48
U. S. v. *International Building Co.,* 345 U. S. 502, 504 35
United States v. *Moser,* 266 U. S. 236, 241 35
United States v. *Paramount Pictures,* 66 F. Supp. 323, 334 U. S. 131 ..... 2, 7, 15, 16, 51
U. S. v. *Socony-Vacuum Oil Co.,* 310 U. S. 150 49
United States v. *The Brig Burdett,* 9 Pet. (34 U. S.) 682, 683 48
Victor Talking Mach. Co. v. *Kemeny Co.,* 271 Fed. 810 (3rd Cir. 1921) 53

STATUTES

Section 1254(1) of Title 28 United States Code 2
Section 1 of the Sherman Act, 26 Stat. 209, 15 United States Code, Section 1 4
Section 2 of the Sherman Act, 26 Stat. 209, 15 United States Code, Section 2 4
Section 5 of the Clayton Act, 38 Stat. 731, 15 United States Code, Section 16 ..... 4, 20, 32
Section 4B of the Clayton Act, 69 Stat. 283, 15 United States Code, Section 15(b) 7
Section 340(1) of the California Code of Civil Procedure 7, 41
Section 338(1) of the California Code of Civil Procedure 7, 41

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

TWENTIETH CENTURY-FOX FILM CORPORATION, FOX WEST COAST THEATRES CORPORATION, FOX WEST COAST AGENCY CORPORATION and NATIONAL THEATRES CORPORATION,

Petitioners,

—against—

SAMUEL GOLDWYN, FRANCIS HOWARD GOLDWYN, SAMUEL GOLDWYN, JR., JAMES A. MULVEY, and BEN FISH, doing business as GOLDWYN PRODUCTIONS, a limited partnership, successors in interest to the plaintiff Samuel Goldwyn Productions, Inc.,

Respondents.

No. ....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners Twentieth Century-Fox Film Corporation, Fox West Coast Theatres Corporation, Fox West Coast Agency Corporation and National Theatres Corporation, pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Ninth Circuit, dated and entered January 24, 1964. A re-hearing was denied on March 12, 1964.

The judgment sought to be reviewed, affirmed in part and reversed in part two decisions of the United States District Court for the Northern District of California, Southern Division, dated October 3, 1956, and May 4, 1961, respectively.

OPINIONS BELOW

The opinion of the Court of Appeals is reported in 328 F. 2d 190. The case was before the court below on cross-appeals from decisions and judgments by two District Court Judges at different stages of the proceedings. The first decision of the District Court was by the late Judge Edward P. Murphy. On October 3, 1956, he granted defendants' motion for partial summary judgment as to all claims accruing more than three years prior to the filing of the complaint. He also made pre-trial rulings on certain matters relating to the so-called *Paramount* case.* His decision is reported in 146 F. Supp. 905. The case went to trial before Judge Murphy. Unfortunately, he died before rendering his decision. The case was then submitted to Judge George B. Harris on the record made before Judge Murphy. Judge Harris's decision in favor of plaintiff is reported at 194 F. Supp. 507. The Court of Appeals reversed Judge Murphy's decision and affirmed the decision of Judge Harris. The opinions below are annexed as Appendix A to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on January 24, 1964. Defendants' (petitioners') petition for a rehearing was denied on March 12, 1964. The jurisdiction of this Court is invoked under the provisions of Section 1254(1) of Title 28, United States Code. The jurisdiction of the District Court was invoked under Sections 4 and 16 of the Clayton Act, 38 Stat. 731, 737, Title 15 United States Code, Sections 15, 26.

**United States* v. *Paramount Pictures*, 334 U. S. 131. The rulings concerning that case are, in the main, the basis upon which this petition is filed. The essence of Judge Murphy's decision was that the running of the statute of limitations was not tolled in plaintiff's favor by the *Paramount* case and that the judgment in that case was not admissible as *prima facie* evidence in plaintiff's private right action.

QUESTIONS PRESENTED

The four questions presented to this Court for review are unusual in that there is a conflict among the circuits as to each. This Court has never given an authoritative answer to any of the four. The questions arise from a treble damage action by a major affiliated producer of motion pictures, Samuel Goldwyn, against two of the defendants in the *Paramount* case and ten others which were not defendants in that case. The questions relate principally to the use which a participant in and beneficiary of a conspiracy in a prior Government action, here Mr. Goldwyn, may make of Section 5 of the Clayton Act against some, but not all, of his co-participants in the conspiracy found in the Government action. Indeed, Mr. Goldwyn was himself a defendant at one stage of the *Paramount* case, was a one-fifth owner for many years of United Artists Corporation, a defendant in that case, and was a producer who by definition in the *Paramount* complaint, was not a person for whose benefit the *Paramount* case was brought. The questions are these:

1. May one who is charged with being a participant in and beneficiary of a conspiracy in an antecedent Government action rely upon such Government action, under Section 5 of the Clayton Act, to suspend the running of a statute of limitations in a private right action?

2. May one who is charged with being a participant in and beneficiary of a conspiracy in an antecedent Government action claim, as plaintiff in a private right action, the benefits of Section 5 of the Clayton Act when he offers a final decree in the Government action as *prima facie* evidence against his co-conspirators as establishing the conspiracy alleged in his own action?

3. Did petitioners waive the California one-year statute of limitations, although pleading it as a partial defense, be-

cause the District Court had previously granted petitioners' motion for a summary judgment based on the California three-year statute?

4. May a participant in and beneficiary of a conspiracy in an antecedent Government action recover against his alleged co-conspirators?

THE STATUTES INVOLVED

Section 1 of the Sherman Act, 26 Stat. 209, 15 United States Code, Section 1, provides, in pertinent part, as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . . ."

Section 2 of the Sherman Act, of 26 Stat. 209, 15 United States Code, Section 2, provides, in pertinent part, as follows:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, ..."

Section 5 of the Clayton Act, 38 Stat. 731, 15 United States Code, Section 16, provides, in pertinent part, as follows:

> "(a) A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15a of this title,

as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto . . .

"(b) Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter . . ."

STATEMENT OF THE CASE

Respondents are the successors in interest of the plaintiff in the District Court, Samuel Goldwyn Productions, Inc., a corporation which claimed that it was the owner of alleged rights relating to twenty-seven motion pictures. Plaintiff claimed that, with respect to the twenty-seven pictures, it or its assignors had received inadequate film rentals from the defendants. Payment of such inadequate film rentals was alleged to have resulted from a conspiracy and monopoly in violation of the federal anti-trust laws. Trebled damages were claimed for injury to plaintiff arising from that conspiracy and monopoly.

It is undisputed that plaintiff in the District Court was controlled by Samuel Goldwyn and that all the motion pictures involved in the case at bar were produced by Samuel Goldwyn. As used here, therefore, the word "Goldwyn" refers to the plaintiff in the District Court, its successors in interest (respondents here) and Samuel Goldwyn, individually.

The complaint was filed on May 16, 1950. Damages were claimed for a period of 13 years prior to the filing of the complaint, that being the period of time over which the twenty-seven motion pictures were distributed. Only seven of such pictures had been produced and distributed within the period

of three years prior to the institution of the action, and only two of such pictures had been produced and distributed within one year prior to suit.

There were two groups of defendants known, respectively, as the "Fox" defendants and the "McNeil and Naify" defendants. The Fox defendants are the four petitioners here. The McNeil and Naify defendants were five corporations and two individuals named R. A. McNeil and Michael A. Naify. A separate trial was ordered as to those defendants on March 18, 1955. The case proceeded to trial only as to the Fox defendants. All proceedings and the trial, except as specifically noted, were before the late Judge Murphy.

In the long record of motion picture anti-trust litigation, only two actions by producers of motion pictures against their actual and potential customers who were operators of motion picture theatres have reached the courts for decisions. The first case resulted in a judgment directly opposite to the decision here. That case, *Eagle Lion Studios* v. *Loew's Inc.*, 141 F. Supp. 658 (S. D. N. Y. 1956), affirmed, 248 F. 2d 438 (2nd Cir. 1957), affirmed, 358 U. S. 100, involved a claim by a plaintiff which was not a defendant or affiliated with any defendant in the *Paramount* case and resulted in a decision for the defendants. The case at bar, which involves virtually the same issue raised in *Eagle Lion*, has resulted in a judgment for the plaintiff even though Samuel Goldwyn was a *Paramount* case defendant and participant in the conspiracy there complained of.

The essence of Goldwyn's claim, stripped of all superfluous and extraneous matters, is that he received inadequate film rentals from the defendants in this case for the motion pictures produced by him and exhibited by them. That situation is alleged to have come about as a result of a combination, conspiracy and monopoly among all the defendants here. The conspiracy charged against the defendants includes not only

the Fox defendants but also the McNeil and Naify defendants. The only claim made or asserted by Goldwyn, moreover, is against these two groups of defendants whom he has named as parties in this case. No claim is made and no charges are asserted against any other producers, distributors or exhibitors of motion pictures and none is alleged to have been a party to or a co-conspirator with any of the defendants in the combination, conspiracy and monopoly here alleged.

Petitioners pleaded as a partial defense that plaintiff's claims were barred by the applicable statute of limitations of California.* They had pleaded both the one-year statute, Section 340(1) of the California Code of Civil Procedure, and the three-year statute, Section 338(1) of the California Code of Civil Procedure. At that time, the decisions of the California federal courts, including the Court of Appeals below, indicated that the applicable statute was the three-year statute. The court below has, since its decision in this case, ruled in other litigation that the one-year statute applies.

To escape the bar of the statute, Goldwyn contended that, by virtue of Section 5 of the Clayton Act, the statute of limitations was suspended as to the petitioners Twentieth Century-Fox Film Corporation and National Theatres Corporation from July 20, 1938, the date when the United States, as plaintiff, filed its petition against those two petitioners and others in *United States* v. *Paramount*, 334 U. S. 131, until the complaint in this case was filed. The pertinent provisions of Section 5 of the Clayton Act are set out above.

It is necessary here to identify Goldwyn and his connection with the *Paramount* case. That case was filed in the United States District Court for the Southern District of New York, Equity No. 87-273, against Paramount Pictures Inc., the first named defendant, and the seven other leading producers and

*The four-year Federal statute of limitations, 15 United States Code, Section 15(b), did not become effective until January, 1956.

distributors of motion pictures, certain of their subsidiaries and the officers and directors of each. Twentieth Century-Fox and National were defendants in that case, as were Samuel Goldwyn and his own company, United Artists Corporation. Another defendant was RKO Radio Pictures, Inc., the company through which Goldwyn distributed his pictures after 1941, the year when he sold his stock and severed his connections with United Artists.

The nature of the *Paramount* case, the Government's claims and the parties to it are considered extensively below. The petitioners Fox West Coast Theatres Corporation and Fox West Coast Agency Corporation were not defendants in the *Paramount* case. None of the McNeil and Naify defendants was a party to that case.

The necessary effect of Goldwyn's contention is that the complaint in the case at bar is based upon matters "complained of" by the Government in the *Paramount* case and that the statute of limitations was suspended as long as that case was pending. Goldwyn further contended that the final judgment in *Paramount* constituted *prima facie* evidence of the conspiracy charged in his private right action. Those contentions were made despite the fact that, as we have noted, Goldwyn was originally named as a defendant in *Paramount* and, as we shall see, practices involving the distribution of his pictures were complained of and relied upon by the Government as establishing its claims against the defendants in that case.

The respective contentions of the parties with respect to the *Paramount* case came on for a hearing before Judge Murphy in the following manner: On June 14, 1956, Goldwyn filed a motion for a pre-trial conference that would bring on for a hearing a "request for a ruling as to the admissibility of the judgments, findings of fact and decree" in the *Paramount* case. Thereafter, on June 19, 1956, the petitioners here filed an application for a hearing and determination, prior to trial, of

their defense of the statute of limitations. A motion for summary judgment dismissing all claims which had accrued more than three years prior to filing of the complaint was then filed. Judge Murphy heard both motions at the same time.*

On October 3, 1956, Judge Murphy entered an order granting defendants' motion for a summary judgment dismissing all claims which accrued prior to May 16, 1947, three years before the complaint was filed. He also held that Goldwyn could not avail himself of the evidentiary benefits of the final judgment entered in *Paramount*. 146 F. Supp. 905. In brief, Judge Murphy ruled that Goldwyn's case was not and could not have been based upon any matter complained of by the Government in the *Paramount* case and that the final judgment in *Paramount* would not constitute an estoppel, as between the parties, if the Government had been plaintiff in the case at bar.

In deciding that the statute was not tolled by the *Paramount* complaint and that Goldwyn could not have the evidentiary benefits of Section 5 of the Clayton Act, Judge Murphy said (App. A, 5a-6a):

> "The Paramount complaint (amended and supplemental complaint, filed November 14, 1940) charged the eight principal motion picture companies with conspiracies unreasonably to restrain and monopolize the production, distribution and exhibition of motion pictures. The allegations relating to the effect of these conspirators upon the industry deal with independent, non-affiliated, producers, distributors, and exhibitors, against whom the conspiracy was directed. So far as

*The appeals below were heard on an original record. The questions here involved relate almost solely to the decision by Judge Murphy on the limitations issue and the effect to be given to the *Paramount* case. The entire record before Judge Murphy on defendants' motion for summary judgment and plaintiff's motion for pre-trial rulings on the *Paramount* case documents, therefore, are submitted as Appendix C to this petition. Excerpts are printed for the Court's convenience as Appendix B.

independently produced films are concerned, the government charged that the conspiracy was effectuated 'by concertedly excluding independently produced films from affiliated theatres'. (Par. 152, Amended and Supplemental Complaint, Paramount case). It becomes entirely clear from a reading of the government's amended and supplemental complaint in the Paramount case that Goldwyn, the present plaintiff, was there alleged to be a 'major producer', or 'one which produces motion pictures for release by a major distributor pursuant to a prior understanding or agreement with such major distributor'. (Par. 15(b), Amended and Supplemental Complaint, Paramount case), and not an 'independent producer' or 'independent distributor', against whom the conspiracies charged by the government in the Paramount case were alleged to be directed. Insofar as the government identified the 'target area' of the conspiracy in its complaint and answers to interrogatories, it is clear that Goldwyn was not within that 'target area', see Karseal Corporation v. Richfield Oil Corporation, 9 Cir., 1955, 221 F. 2d 358, 362, and indeed was charged with being a participant and beneficiary, to some extent at least, in the conspiracies, by reason of his affiliation with United Artists, one of the defendants in the Paramount case, and by his knowledge of and agreement and consent to the distribution practices of the defendants in the Paramount case (Pars. 84, 86, Amended and Supplemental Complaint, Paramount case). In the words of Judge Wyzanski in the Momand case, supra, '* * * in none of the pleadings in those proceedings is there any reference to * * * alleged wrongs directed specifically against * * * this plaintiff * * *.' D. C. Mass. 1942, 43 F. Supp. 996, 1012."

After the trial, and before a decision had been entered, Judge Murphy died. The case was then assigned to Judge Harris and the cause was submitted to him for decision on the record made before Judge Murphy. Judge Harris accepted

Judge Murphy's ruling that the statute of limitations was not tolled and that the judgment in *Paramount* was not admissible. On May 4, 1961, however, Judge Harris filed his opinion holding that petitioners were liable to plaintiff for damages in the amount of $100,000, to be trebeled to $300,000, attorneys' fees in the amount of $100,000, and costs in the amount of $66,507.31. (App. A, 9a-35a). Both sides appealed.

The court below affirmed the judgment of the District Court so far as liability was concerned. As to the petitioners Fox West Coast Theatres Corporation and Fox West Coast Agency Corporation the judgment, except certain costs allowed by Judge Harris, stands affirmed as entered because neither was a party to the *Paramount* case. So far as the petitioners Twentieth Century-Fox and National are concerned, the court below held that liability had been established for the three year period covered by the evidence and that the amount of damages would be affirmed for that period. It also held that Judge Murphy had erred in holding that Goldwyn's claim was not based upon any matter complained of in *Paramount*. It therefore held that the statute of limitations was suspended from July 20, 1938, to the date the complaint was filed, and that defendants had waived application of the one-year statute of limitations by securing a summary judgment based on the three-year statute. The court below also indicated that the *Paramount* case judgment and certain findings and conclusions would be admissible. The court thus affirmed the judgments of the District Court in part, reversed in part, and sent the case back for further proceedings as to the petitioners Twentieth Century-Fox and National Theatres. Those are the rulings of the court below as to which petitioners seek review here.

Prior to discussing the reasons why the writ should be granted, we note the following concerning the status of Samuel Goldwyn, his position in the motion picture industry, and his own relationships with the other defendants in the *Paramount* case.

Mr. Goldwyn has been connected with the motion picture industry almost from its beginning. He was one of the first producers. In May, 1924, he gave his name to a company which became known as Metro-Goldwyn-Mayer, Inc., when Goldwyn Pictures Corp. was merged with Metro Pictures. Subsequently, in 1925, Goldwyn became affiliated with United Artists Corporation as a part owner. When the petition in *Paramount* was filed Goldwyn owned one-fifth of the stock of the defendant United Artists and distributed his pictures through that company. From and after 1941, Goldwyn's pictures were distributed through RKO, one of the major integrated defendants in *Paramount*. We consider here the allegations of the complaint, the pre-trial statements of the Government and the evidence relating to the Goldwyn pictures which was introduced by the Government at the trial of the *Paramount* case.

A. The Petition and Amended Complaint in *Paramount*

In support of its motion for summary judgment dismissing all claims which had accrued prior to May 16, 1947, and in opposition to plaintiff's motion for rulings on the *Paramount* case judgment, defendants submitted the affidavit of John F. Caskey. Mr. Caskey had been trial counsel for Twentieth Century-Fox and National Theatres during the trial and other proceedings in the *Paramount* case. With his affidavit Mr. Caskey attached exhibits A to R, which exhibits consisted of original documents in *Paramount*. This material is printed in Appendix C and each document is identified there by its *Paramount* case title. Goldwyn's material is also included in Appendix C.

Since Appendix C itself is quite lengthy, petitioners have included as Appendix B excerpts from the documents contained in Appendix C and parts of the Caskey affidavit. Those excerpts relate particularly to Goldwyn. Appendix B follows the opinions of the courts below in Appendix A.

The *Paramount* case was in the nature of a judicial survey of all phases of the motion picture industry. It can not be doubted that the action was commenced for the primary purpose of affording "independents", that is, non-affiliated, non-circuit exhibitors and non-affiliated producers and distributors relief from illegal restraints imposed upon them by the defendants and those affiliated with the defendants.

The petition in *Paramount* named Goldwyn as a defendant. He was by definition a "major producer", that is, one who distributed his pictures through one of the major distributor defendants. He was excluded by definition from any class of independents (App. B, 2b-3b).

In Bills of Particulars filed by the Government, the United Artists (Goldwyn's company) defendants were charged with acting in concert and pursuant to agreements with the other defendants (App. C, 263c, 267c).

On November 14, 1940, the Government filed an amended and supplemental complaint which replaced the petition. The same eight groups of companies were continued as defendants, although the officers and directors of each were dropped as defendants. At that time, Goldwyn was still distributing pictures through United Artists and was identified as one of the owners of that company (App. B, 4b). Again, Goldwyn was by definition a major producer, one which produced motion pictures for release by a major distributor pursuant to a prior understanding with such distributor. He was excluded again from any class of "independents".

(B) The Government's Statements in Pre-Trial Proceedings in *Paramount*

During the course of pre-trial proceedings in Paramount, the Government further clarified the nature of its claims and its complaint with respect to Goldwyn. Those proceedings demonstrate that Goldwyn's claim could not be based in whole or in part upon any matter complained of by the Government.

We point to them as removing any possible doubt that the complaint, on its face, was directed *at*, and not in favor of, Goldwyn and his practices.

1). Numerous Interrogatories were propounded by the defendants and answered by the Government. Those Interrogatories are identified in the Caskey affidavit. In one such answer, the Government listed 540 exhibition agreements as containing facts relied upon to establish its charges. Among those agreements were many relating to Goldwyn pictures (App. B, 5b).*

2). In answer to other Interrogatories which related to the charge that certain defendants had attempted to monopolize or had monopolized first run exhibitions, the Government listed 500 additional documents as supporting its charge. Again, many contracts for Goldwyn pictures with affiliated theatres were listed (App. B, 7b). These documents plainly show that the Goldwyn pictures were ones which had access to affiliated theatres and were part and parcel of the alleged conspiracy. Unlike the Government's complaint with respect to independent producers, Goldwyn's pictures were never excluded from the affiliated theatre market. In the Government's eyes, Goldwyn plainly was not an independent.

3). In certain other Interrogatories, the Government was called upon to identify any of the so-called "independent producers" which had been excluded from defendants' theatres. In two sets of answers, the Government listed numerous persons as independent producers who had been excluded from the affiliated market. In neither set of answers did the name Goldwyn appear as one who had been excluded from the market (App. C, 317c-44c).

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*It should also be noted that with respect to all agreements for the exhibition of the Goldwyn pictures, Goldwyn had retained and exercised a specific power to approve or reject the agreements negotiated for him by his own company, United Artists, and by RKO.

(C) The Evidence Introduced by the Government Upon the Trial of the *Paramount* Case

At the trial the Government relied upon many activities involving the licensing of the Goldwyn pictures as proof of the actual matters of which it complained. Among others were the following:

1) One trade practice vigorously condemned was the licensing of pictures pursuant to a "master agreement". The Government contended, the Expediting Court so found and this Court affirmed, that such agreements had discriminatory and exclusionary effects upon independent exhibitors. Government Exhibits 199 and 382 were two such master agreements. Exhibit 199 was an agreement between United Artists and a subsidiary of the petitioner National. Four Goldwyn pictures were included in that contract. It reflected the Government's complaint that four of the Goldwyn pictures were distributed as part of the conspiracy of which it complained. That Exhibit was also referred to by the Expediting Court as supporting the Government's charge that the defendants had engaged in a price-fixing conspiracy. Government's Exhibit 382 was a master agreement between United Artists and Warner Bros. Circuit Management Corporation (App. C, 372c-76c). Five Goldwyn pictures were included in that agreement. The condemnation of such master agreements by the Expediting Court is to be found in 66 F. Supp. 323, 346-47 and 352. This Court affirmed the Expediting Court's condemnation of all such practices.

2) Another trade practice strongly condemned by the Government in *Paramount* was the licensing of motion pictures pursuant to franchises. A franchise covers more than one motion picture season. Government Exhibit 195 was a ten-year franchise between United Artists and a Paramount exhibiting subsidiary. That franchise related to and included all pictures

produced during the ten-year period by Samuel Goldwyn and other stockholders of United Artists. Goldwyn's consent to the franchise is set out in Exhibit 195 (App. C, 377c-451c).

3) Government Exhibit 142 in *Paramount* (App. C, 452c-81c) is United Artists' answer to Government Interrogatory 48. It showed the result of fourteen pictures distributed by United Artists during the 1936-37 season in New York City, Philadelphia, Atlanta and Kansas City. Three Goldwyn pictures were set forth in that exhibit. It showed that Goldwyn pictures had full access to affiliated theatres in those cities, and that the distribution of those pictures was a part of the conspiracy complained of.

4) Formula deals were a trade practice carried on by RKO and Paramount. It is undisputed that during the period of time involved in the trial of the *Paramount* case at least seven Goldwyn pictures were licensed by RKO, with Goldwyn's approval, to National's subsidiaries pursuant to formula deals. The Expediting Court said (66 F. Supp. 323, 347):

> "Formula deals have been entered into by Paramount and by RKO with independent and affiliated circuits. By such agreements a particular circuit has been licensed to exhibit a certain feature in all its theatres at a specified percentage of the national gross receipts realized from that feature by all theatres in the United States. The circuit may allocate playing time and film rentals among the various theatres as it sees fit. See Plaintiff's Exhibits 241, 419A, 419B. Arrangements whereby all the theatres of a circuit are included in a single agreement, and no opportunity is afforded for other theatre owners to bid for the picture in their several areas, seriously and as we hold unreasonably restrain competition. These formula deals have been negotiated without, so far as we are informed, any competition on the part of independent theatre owners who would labor under a great disadvantage in attempt-

ing severally to match or outbid the offers of a circuit that was making offers for all of its theatres."

5) Finally, Government Exhibit 93 showed the results obtained by RKO for the pictures distributed by it during the 1943-44 motion picture season. RKO was the operator of a large circuit of theatres as well as being both a producer and a distributor. This exhibit dealt with RKO's business as a distributor and showed the film rentals received by it for all pictures distributed during the 1943-44 season. Exhibit 93 shows that for UP IN ARMS, a Goldwyn picture, RKO obtained more money in film rental than any other picture distributed by RKO that season. Another Goldwyn picture NORTH STAR was RKO's fourth highest-grossing picture. The first seven pictures were these:

Picture	Billings	Total Rental
UP IN ARMS (Goldwyn)	10,149	$2,751,693
LADY TAKES A CHANCE (Ross) ...	13,987	1,955,781
TENDER COMRADE (RKO)	11,733	1,825,300
NORTH STAR (Goldwyn)	10,141	1,759,419
SHOW BUSINESS (RKO)	11,780	1,703,990
GOVERNMENT GIRL (RKO)	12,507	1,628,005
STEP LIVELY (RKO)	10,286	1,347,557

The foregoing shows that under the decision of the court below it would be possible for Goldwyn to assert claims for damages for alleged inadequate film rentals for these very same Goldwyn produced and RKO- and United Artists-distributed pictures. And yet it was the distribution practices pertaining to these same pictures to which the Government pointed as demonstrating the unlawful conduct of which it had complained and the benefits to those who were participants in such conduct.

It is thus the petitioners' claim here that the foregoing documents, taken in conjunction with the specific allegations of

the Government's complaint, establish that Goldwyn was a party complained *against* in *Paramount;* that the Government was not complaining of any matters resulting in any damage to Goldwyn or his pictures; and that the court below plainly misconceived and misinterpreted Section 5 of the Clayton Act in holding that that statute could be availed of by Goldwyn in the circumstances here present.

REASONS FOR GRANTING THE WRIT

Summary of Argument

The importance of the questions here submitted for resolution by this Court is, we believe, evident in the questions themselves. As we have indicated, and shall later show, the answers of the court below are in conflict with the decisions of other circuits. This Court should resolve those conflicts. This is particularly true where, as here, the questions presented involve important considerations of public policy.

If it is to be held—as the court below held—that a defendant in an antecedent Government anti-trust proceeding may take advantage of his own wrongdoing by claiming the benefits of Section 5 of the Clayton Act in a subsequent action against his co-conspirators, we have reached a status in the law never contemplated by Congress in enacting the anti-trust laws or by those courts which have denied a law violator any profit from his own misdeeds.

It is obvious that Goldwyn shares the same status so far as the Government's complaint is concerned as United Artists and RKO. If they were defendants against whom the Government complained, as indeed they were; then the same complaint must necessarily attach to Goldwyn and Goldwyn's pictures. No subtleties of reasoning can disassociate Goldwyn from his distributors, United Artists and RKO, and his absolute control over the distribution policies of his pictures.

Consider United Artists. It was a distributor only (App. B, 2b). Its whole business was dependent upon the pictures produced for distribution by its five owners, one of whom was Goldwyn. Without those pictures United Artists had nothing to sell to any exhibitor, affiliated or independent. RKO was a fully integrated company but its distribution business was largely dependent upon outside producers, such as Goldwyn, with whom it had distribution contracts.

We do not think any court would take seriously a claim by United Artists or RKO that it was entitled to the benefits of Section 5 of the Clayton Act if it brought an action against the petitioners here. And yet we have substantially the same situation in this action by Goldwyn. He was a charged participant in and beneficiary of the conspiracy alleged in *Paramount*. His action here is against two of his co-conspirators and fellow participants. This is the same conspiracy and Goldwyn's participation in it continued throughout the entire time the *Paramount* case was pending.

Goldwyn does not stand in the position of one who had at one time participated in an unlawful conspiracy but who had withdrawn and then, after his withdrawal, brought an action against some of the defendants for injuries inflicted after he withdrew. The activities of which the Government complained in *Paramount* were the very activities in which Goldwyn participated both directly and through his agents and from which he reaped benefits to the found injury of independent exhibitors.

This Court set the permissible bounds for use, by a private plaintiff, of a judgment or decree entered in an antecedent Government action in *Emich Motors* v. *General Motors*, 340 U. S. 558, but it has not had occasion to consider for the guidance of the lower courts any of the questions posed in this petition. Unless this Court does resolve the conflict which exists between the court below and the other circuits on each

of the questions here presented, co-conspirators and, indeed, defendants themselves in Government actions may reap windfalls, as has Goldwyn up to this point, stemming from their own unlawful conduct.*

In addition to the foregoing, a substantial question of estoppel and waiver exists with respect to the applicable statute of limitations. The decision below that petitioners had waived application of the one-year California statute because they had obtained a summary judgment based on the three-year statute raises a substantial question of law and of public policy that should be settled by this Court. The decision below on that question is in conflict with decisions on the identical question by the Courts of Appeal for the Second and Seventh Circuits.

I. May One Who Is Charged with Being a Participant in and Beneficiary of a Conspiracy in an Antecedent Government Action Rely upon such Government Action, under Section 5 of the Clayton Act, to Suspend the Statute of Limitations in a Private Right Action?

Section 5 of the Clayton Act provides, as pertinent here, that in a private right action

> "... the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof."

Thus, the question here was whether Goldwyn's claim was actually based in whole or in part on any matter complained of by the Government in *Paramount*. In an earlier decision, the court below had laid down the rules for determining that question. *Steiner* v. *20th Century-Fox Film Corporation*, 232

*The flood of cases following the Philadelphia indictments in the electrical equipment industry gives some indication of what could happen.

F. 2d 190 (9th Cir. 1956). The court was then composed of Circuit Judges Stephens and Chambers and District Judge McLaughlin. There the court said (p. 196):

> "The same means must be used to achieve the same objectives of the same conspiracies by the same defendants."

And, further (p. 196):

> "The tolling provision cannot be extended to matters which might have been but were not complained of by the United States. It is restricted to matters actually complained of. The general rules of collateral estoppel apply."

And, in summary, the court made the rule explicit, saying (p. 198):

> "(c) The same means must be used to achieve the same conspiracy by the same defendants in order to toll the running of the statute of limitations under 15 U. S. C. A. § 16."

Further, in the *Steiner* case, the court below explicitly noted that it was not enough for a private plaintiff to allege the same conspiracy. It said (p. 196):

> "General allegations of conduct in violation of the anti-trust laws unrelated to the same conduct alleged in a public suit are insufficient to toll the running of a statute of limitations. A greater similarity is needed than that the same conspiracies are alleged."

In line with the above principles, the determinative matters were the following: What was the actual nature of the conspiracy complained of by the Government in *Paramount*? Who were the parties comprising the conspiracy? What was the objective of the conspiracy complained of? At whom was it directed, that is, what class did the Government claim was damaged by the defendants' activities?

Judge Murphy made those determinations. His holdings on these points were explicit and incontrovertible. He said (App. A, 5a):

> "A comparison of the essence of the complaint in the Paramount case with the essence of the complaint of plaintiff here discloses two substantially different conspiracies, by different sets of conspirators, for quite different objectives, and employing in large part different means."

He then compared the complaint filed by Goldwyn with the amended complaint in *Paramount* and concluded (App. A, 6a):

> "The essence of the Goldwyn complaint now before the court is a conspiracy, participated in by two of the Paramount defendants, but also by others *not* parties to the Paramount case or the conspiracies there charged unreasonably to restrain trade in the motion picture industry which has had the effect of damaging him by depressing the film rentals which he might have obtained from defendants in a free and competitive market.
>
> "Enough has been said to show that the tests of the Steiner case, supra, are not satisfied by the Goldwyn complaint."

These were the controlling considerations leading to Judge Murphy's conclusions which have been quoted on pages 9 and 10 above.

In the case at bar, the court below (now composed of Circuit Judges Pope, Hamley and Browning) made none of the determinations prescribed by it in *Steiner*. Instead, it held (App. A, 86a-87a):

> "But, in any event, the tolling statute does not require, and the *Steiner* test does not provide, that all matters complained of in the private action must find a counterpart in the Government action. The private

> action is only required to be based in part on a matter complained of in the Government suit. The Goldwyn action is based at least in part on an alleged combination and monopoly between Twentieth Century Fox and National having the objective of monopolizing the business of exhibiting motion pictures, such objective being attained by the acquisition and operation of moving picture theatres.
>
> "Building on this foundation, plaintiff alleges that this combination and conspiracy has prevented it, as a non-theatre-owning producer, from licensing its pictures to those theatres on fair and reasonable terms. The foundation allegations, which are a substantial and critical part of the Goldwyn case, as so analyzed, related to a combination and monopoly which, in our view, finds substantial similarity in that part of the amended *Paramount* complaint to which reference has been made."

The court's error becomes manifest from a consideration of the language set out above. The court appears to be saying that because, of the twelve defendants alleged by Goldwyn to have conspired to damage him, two were also charged with conspiracy and monopoly in *Paramount*, plaintiff had established that his complaint was based "in part" upon matters complained of by the Government. That construction is untenable because it is contrary to the plain language of the statute. Goldwyn's complaint was not directed "in part" or in any other way against the two defendants common to both *Paramount* and this case. Goldwyn's only charge in this case is that all the defendants—not some or a part—did the acts alleged to have injured him.

If a Government complaint charges a conspiracy between A and B and a private suit charges that B, C and D were parties to a conspiracy, it is true that B was a party to or a "part" of both conspiracies. That factor, however, is unimportant. Common participation by one or two parties to two

conspiracies having no other factor in common, of purpose or of membership, does not and can not make the conspiracies the same or mean that one is based "in part" upon the other. The crux of any conspiracy is its mutually agreed upon purposes and objectives. It is well settled that mere similarity of method in carrying out separate and distinct conspiracies by similar conspiratorial methods does not convert those separate and distinct conspiracies into a single over-all conspiracy, even where there is a partial over-lapping of the membership of such conspiracies. *Kotteakos* v. *United States*, 328 U. S. 750; *Terry* v. *United States*, 7 F. 2d 28 (9th Cir. 1925); *Tinsley* v. *United States*, 43 F. 2d 890 (8th Cir. 1930); *Marcante* v. *United States*, 49 F. 2d 156 (10th Cir. 1931); *Asgill* v. *United States*, 60 F. 2d 780, 785 (4th Cir. 1932); *Craig* v. *United States*, 81 F. 2d 816 (9th Cir. 1936), *cert. den.* 298 U. S. 690, *reh. den.* 299 U. S. 620.

This particular bench of the court below, moreover, equated Goldwyn as "a non-theatre-owning producer" with an "independent" producer within the definitions of the *Paramount* complaint. This was also manifest error. In *Paramount* an independent producer was defined as one who was not a major producer. A major producer was defined as one who produces pictures for release through a major distributor. Goldwyn was always by definition a major producer. That fact can not be controverted. Theatre ownership has nothing to do with whether a producer is or was a "major" or an "independent". Under the decision by the court below, however, Goldwyn would stand as an independent despite the express definitions by the Government which excluded him from that category.

Both Mr. Goldwyn and the court below relied upon paragraph 170 of the *Paramount* amended complaint which alleged that each producer-exhibitor-defendant*—here Twen-

*RKO Radio Pictures, Inc., Goldwyn's distributor and agent, was also a producer-exhibitor defendant.

tieth Century-Fox and National—was a separate combination which violated Sections 1 and 2 of the Sherman Act by specified conduct. In this way the court sought to demonstrate that Goldwyn's complaint was based at least in part upon some matter complained of in *Paramount*. But the court ignored the fact that paragraph 170 is but one paragraph of eight in Section D of the complaint, that it ends with a colon and that the violations referred to in that paragraph were explicitly spelled out in paragraphs 171-77 as having been aimed at "independent producers", "independent distributors" and "unaffiliated exhibitors". Goldwyn falls into none of those categories or definitions. Even the local monopoly of the "business of exhibiting motion pictures" alleged in paragraph 174 was aimed at "unaffiliated exhibitors", not at affiliated producers such as Goldwyn. Because the *Goldwyn* complaint used some language similar to that in the *Paramount* complaint, the court below seemed to think that that fact was sufficient to bring Goldwyn within the ambit of Section 5 of the Clayton Act. To by-pass its holding in *Steiner*, the court said (App. A, 83a-84a):

> "One of the objectives of this combination and monopoly, according to paragraphs 16(a), 17(a) and 18(a) of the Goldwyn complaint, is to monopolize the business of exhibiting motion pictures. According to the same paragraphs, the means utilized to achieve that objective included the acquisition and maintenance of a monopolistic combine of theatres for the exhibition of motion pictures. Twentieth Century Fox and National, being named defendants in the Goldwyn complaint, were alleged participants in the alleged combination and monopoly referred to above.
>
> "Comparing the described combinations and monopolies with their respective objectives, means of accomplishment and participants, as set forth in the amended *Paramount* complaint, and in the Goldwyn case, it would seem that all of the similarities are present which are required to meet the *Steiner* test."

This obviously could not be a correct interpretation of the law or of the court's own decision in *Steiner*. If it were, a mere parroting of language in a Government complaint would give a defendant in the Government action the benefit of Section 5. This is plainly not the intendment of Section 5.

Quite apart from this, Goldwyn's complaint nowhere charges any activity on the part of the *Paramount* case defendants, that is, all the defendants, with any conduct which injured him. Nor does he charge any separate unlawful conduct by the only *Paramount* case defendants in the case before this Court—Twentieth Century-Fox and National. None of his complaint is based in whole or in part upon the Government's complaint in *Paramount*.

Goldwyn's complaint throughout is predicated upon alleged unlawful activities by "the defendants" and it is simply to the effect that he was forced to accept inadequate film rentals from "the defendants" be ause of the conspiracy and monopoly of "the defendants". Who are "the defendants"? National and Twentieth Century-Fox were defendants in *Paramount* but the other defendants here were not, namely, two subsidiaries of National, National's president and the McNeil and Naify defendants—two individuals and five corporations. Entirely aside from the fact that Goldwyn himself was so involved in *Paramount* that he could not possibly claim the benefits of Section 5 of the Clayton Act, the addition of these ten non-*Paramount* case defendants was an additional factor which was fatal to any claim that Goldwyn's complaint was or could have been based in whole or in part on any matter complained of in *Paramount*. The Government made no complaint of any sort against those ten non-*Paramount* case defendants which make up ten-twelfths of "the defendants" here.

We must also note, and most importantly, that shortly after the decision sought to be reviewed here, another bench of the court below in another case involving the tolling effects of Section 5 of the Clayton Act reached a result directly op-

posite to that in the case at bar. Less than three weeks after the re-hearing was denied in this case, the Ninth Circuit (composed of Circuit Judges Barnes and Jertberg and District Judge Burke) on April 2, 1964, announced its decision in *Marc D. Leh* v. *General Petroleum Corporation, et al.*, (No. 18,333). Plaintiff in that case also relied upon an antecedent Government action to toll the statute of limitations under Section 5 of the Clayton Act. The District Court (Judge William C. Mathes) had held that the applicable statute of limitations was the one-year California statute and that the plaintiff's claim was not based in whole or in part upon the antecedent Government action. 208 F. Supp. 289 (S. D. Cal. 1962).* After referring to the decision of the court below in *Steiner*, Judge Mathes said (pp. 294-95):

> "Applying these criteria, it is clear from comparison of the two cases that pendency of the Government's action in United States v. Standard Oil Company, et al., supra, Civil No. 11584-C, did not operate to suspend the statute of limitations in the case at bar. For in No. 11584-C the Government's charges were directed against an alleged agreement and combination among major oil companies intent upon eliminating competition among themselves, *inter alia*, by controlling prices and the production of petroleum products among independent producers and distributors; whereas, plaintiffs' claim at bar rests, not upon an alleged agreement by the defendant companies to control, but upon an alleged combination to exclude plaintiffs from wholesale gasoline distribution in the Southern California area.
>
> "* * * Furthermore, the defendants in both cases are not the same: Shell Oil Company and the Conservation Committee of California Oil Producers were joined

*The decision by Judge Mathes in *Leh* was rendered while this case was on appeal. The decision of the court below in affirming Judge Mathes is also contrary to the decision at bar on the applicable statute of limitations of California.

as defendants in No. 11584-C, but not in the action at bar, and Olympic Refining Company was originally joined as a defendant in this case, but not in No. 11584-C. [Cf. Momand v. Universal Film Exchange, supra, 43 F. Supp. at 1011.]"

In affirming Judge Mathes's decision, the Court of Appeals, F. 2d , referred to the Government case and then went on to affirm the holding that the one-year statute applied. With respect to the tolling provisions of Section 5 of the Clayton Act, the court re-affirmed its decision in *Steiner* and said (Opinion, pp. 21-22):*

> "Nor do we think the trial court erred in holding the statute of limitations was not tolled during the pendency of the action entitled *United States* v. *Standard Oil Co. of California,* Civil No. 11584-C.
>
> "From *Steiner* v. *20th Century Fox Film Corp., supra,* this court has already held:
>
> (a) The general rules of collateral estoppel apply. 'The tolling provision cannot be extended to matters which *might* have been but were not complained of by the United States.' (232 F. 2d at 196.)
>
> (b) What is contained in the two suits is determined by a comparison of the two complaints.
>
> (c) '[T]he matters complained of in the private proceeding must be the same acts to achieve the same conspiracy complained of in the action brought by the United States. . . . The same means must be used to achieve the same objectives of the same conspiracies by the same defendants. . . .' There must be 'substantial identity of subject matter.'
>
> "None of these tests are met. (Compare Tr. pp. 2 to 24 and Tr. pp. 1136 to 1158.) For example, the

*The opinion had not been reported when this petition was printed. The citation will be filed with the Clerk of this Court when the opinion is reported.

> defendants in the government suit were seven integrated oil companies and the Conservation Committee of California Oil Producers. Neither Shell Oil Company nor the Committee were involved in the instant action. As a second example, the conspiracy in the instant case allegedly started in 1948 and continued into 1954. In the government case, the alleged conspiracy commenced in 1936 and was concerned exclusively with events taking place prior to May of 1950. Thus, there were not only different overt acts charged, but different conspiracies, occurring at different times, between different parties."

It is obvious that the decision of the court below in this case and the decisions of the same court in the *Steiner* and *Leh* cases can not be reconciled. In *Steiner,* plaintiff was the owner of an unaffiliated, independent theatre named the Larchmont. The defendants there were two of the *Paramount* case defendants, the same Twentieth Century-Fox and National which are defendants here, as well as four non-*Paramount* defendants, two of which were subsidiaries of National. The other two defendants were a husband and wife who had at one time leased the Larchmont theatre. The statute of limitations was not tolled in *Steiner.*

In *Leh,* plaintiff was an independent oil distributor. The defendants were six major integrated oil producers which had been defendants in the Government case. In fact, all but two of the eight defendants in the Government case were defendants in *Leh.* The court below held that the statute was not tolled as to Mr. Leh.

In this case, however, Goldwyn was, by definition, not an "independent" but a major affiliated producer of motion pictures. He named only one of the *Paramount* case groups of defendants as defendants here. He also named ten non-*Paramount* case defendants as defendants here. The court below held that the statute of limitations was tolled for Goldwyn.

There is thus a plain conflict within the court below, the result depending upon the composition of the particular bench hearing the case. Mrs. Steiner and Mr. Leh, although clearly members of a class for whose benefit the Government suits were instituted, were held not to be entitled to the benefits of Section 5. Goldwyn, on the other hand, although not a member of any such class, but otherwise situated in an almost parallel position, was held entitled to those benefits.

The decision here is also in conflict with decisions of the other circuits. In *Steiner*, the Ninth Circuit relied upon the decision of the First Circuit in *Momand* v. *Universal Films Exchanges*, 172 F. 2d 37, 48 (1st Cir. 1948), *cert. den.* 336 U. S. 967 (1949). In that case, plaintiff brought suit against the eight principal distributors of motion pictures to recover treble damages alleged to have been sustained in the operation of numerous theatres in Oklahoma as a result of defendants' violations of the anti-trust laws. Defendants pleaded the Massachusetts six-year statute-of limitations and plaintiff relied upon Section 5 of the Clayton Act to toll the statute. With respect to certain of the Government proceedings relied upon by plaintiff, Judge Wyzanski in the District Court said (43 F. Supp. 996, 1012):

> "The proceedings against the Fox and Warner interests under Section 7 of the Clayton Act, 15 U. S. C. A. § 18, (fdgs. 38 and 39) have so remote a connection with the matters here complained of that I conclude they do not toll the statute. * * * * None of the plaintiff's assignors was a producer or distributor and they were remotely, if at all, interested in the matters alleged in the proceedings referred to in findings 38 and 39.
>
> "* * * In none of the pleadings in those proceedings is there any reference to alleged wrongs in Oklahoma or alleged wrongs directed specifically against the assignors of this plaintiff. In at least one case the proceedings are not only remote in place but also in time, having begun after this suit was begun."

So here. The *Paramount* complaint was concerned with practices directed against independent producers and distributors and exhibitors not affiliated with the defendants in that case. That is not and can not be the substance of Goldwyn's complaint. Further, to use the language of *Momand,* "In none of the pleadings in those proceedings [here, *Paramount*] is there any reference to . . . alleged wrongs directed specifically against . . . this plaintiff", that is, Goldwyn.

The holding below in this case is also in conflict with the decision of the Second Circuit in *Dipson Theatres* v. *Buffalo Theatres,* 190 F. 2d 951 (2nd Cir. 1951), *cert. den.* 342 U. S. 926. In that case, Judge Augustus N. Hand, who wrote the opinions of the Expediting Court in the *Paramount* case, considered the effect of the adjudications in that case upon claims asserted by private plaintiffs. In his opinion, Judge Hand referred to the fact that the parties charged as conspirators in the private case were different from those charged as conspirators in the *Paramount* case, saying (p. 958):

> "The fact that plaintiff now concedes that Columbia and Universal were not partie to the present conspiracy and concededly Shea and McFaul were not parties to the original Paramount action also indicates that that case is not controlling here."

The logic of the decisions in the *Dipson, Steiner* and *Leh* cases is self-evident. If the defendants are different, then the conspiracies are necessarily different. And the purposes and objectives of the different conspiracies must neeessarily be different. See cases cited, *supra,* page 24.

The purposes and objectives of the conspiracy alleged by Goldwyn were to pay him inadequate film rentals for the pictures exhibited by the defendants here. That is not the *Paramount* case conspiracy and Goldwyn can not, by self-serving declarations in his pleadings or by copying the language of *Paramount,* or by pointing to one facet of the broad conspiracy

alleged in *Paramount*, convert himself into a person at whom the defendants' activities in the *Paramount* case were aimed.

Since there is substantially no identity of the defendants in this case with those in *Paramount* the statute of limitations was not and could not have been tolled, Goldwyn's complaint is not and could not be based upon any matter complained of by the Government in the *Paramount* case.

Finally, the misconceptions of the court below as to the meaning, purpose and applicability of Section 5 are most strikingly summed up in the last sentence of the court's opinion. It there said (App. A, 102a):

> "It need only be added that, in our view, the fact that at an early stage of the *Paramount* case, Samuel Goldwyn, as an individual, was named as a defendant and co-conspirator, has nothing whatever to do with the applicability of section 5 in the Goldwyn case."

We submit that this statement can only be read as saying that one who is a participant in and beneficiary of a conspiracy of which the Government complains is nevertheless entitled to have resort to the Government case and all the benefits of Section 5 in an action against some of his co-conspirators. Such a conclusion does violence to the Congressional intendment in enacting Section 5. This interpretation is not only novel but indefensible. A review and correction of that interpretation by this Court constitutes a sufficient reason, standing alone, for granting the petition here prayed.

II. May One Who Is Charged with Being a Participant in and Beneficiary of a Conspiracy in an Antecedent Government Action Claim as Plaintiff in a Private Right Action the Benefits of Section 5 of the Clayton Act when He Offers a Final Decree in a Government Action as Prima Facie Evidence?

The court below, once it had concluded that Section 5 tolled the statute of limitations, seems to have assumed that

certain material offered by plaintiff from the *Paramount* case became automatically admissible. While we agree that the two provisions of Section 5 must be read together, one provision is not necessarily dependent upon the other. It is obvious that the statute of limitations could be tolled and yet the judgment would not be admissible if a trial resulted in favor of the defendants. And even when it is held that the statute was tolled the court must still examine the Government case and holdings to determine if any judgment entered in such an action would constitute an estoppel if the Government were substituted as plaintiff in the private action. The considerations discussed under the first question are pertinent, therefore, in considering the admissibility of the *Paramount* case material offered by plaintiff. Goldwyn's status as a *Paramount* case defendant and as a participant in and beneficiary of the conspiracy there found are of the utmost importance in considering the admissibility of the judgment entered in that case.

The court below did not, in so many words, reverse Judge Murphy's decision as to "the admissibility of the decree in the Paramount case pursuant to another provision of Section 5 of the Clayton Act" (App. A, 6a-7a). As pertinent here, Section 5 provides:

> "A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15a of this title, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto."

The court below accepted Goldwyn's version of what Judge Murphy had decided, namely, that he "on October 3, 1956, entered an order holding that the judgments, findings of fact and decrees in the *Paramount* case were inadmissible in evi-

dence in this case." (App. A, 99a). Judge Murphy, however, said nothing of the findings and conclusions. He followed the words of Section 5 of the Clayton Act and the decision of this Court in *Emich Motors* v. *General Motors*, 340 U. S. 558, in holding that "the decree in the *Paramount* case is therefore not admissible" (App. A, 8a).

Emich is the controlling authority from this Court on the question whether a decree in an antecedent Government action is admissible as *prima facie* evidence in a private right action. In that case, the defendants had been convicted of a conspiracy which forced franchised Chevrolet dealers to use General Motors Acceptance Corporation as their finance agency. Emich was a dealer whose franchise had been cancelled because he refused to use the Acceptance Corporation and, instead, used his own finance company. The trial court refused to admit the record in the Government action but did admit the indictment, verdict and judgment of conviction. The jury was charged that the judgment was *prima facie* evidence that the defendants were guilty as charged in the indictment. The Court of Appeals reversed, holding that it was improper to exhibit the indictment to the jury. This Court affirmed the result arrived at by the Court of Appeals, holding that the trial court should have examined the record in the Government case to determine which, if any, of the issues raised by the indictment were actually determined by the judgment and that the court should have charged the jury accordingly. This Court said (p. 568):

> "By its terms, however, § 5 makes a prior final judgment or decree in favor of the United States available to a private suitor as prima facie evidence of 'all matters respecting which' the judgment 'would be an estoppel' between the defendants and the United States. We think that Congress intended to confer, subject only to a defendant's enjoyment of its day in court against a new party, as large an advantage as the estoppel doctrine would afford had the Government brought suit.

> "The evidentiary use which may be made under § 5 of the prior conviction of respondents is thus to be determined by reference to the general doctrine of estoppel."

And, further, (p. 569):

> "Such estoppel extends only to questions 'distinctly put in issue and directly determined' in the criminal prosecution."

The principles of law announced by this Court in *Emich* are based upon the doctrine of collateral estoppel or estoppel by judgment and have been often and variously stated by this Court. See, for example, *Cromwell* v. *County of Sac*, 94 U. S. 351; *New Orleans* v. *Citizens' Bank*, 167 U. S. 371; *Southern Pacific Railr'd* v. *United States*, 168 U. S. 1, 52; *United States* v. *Moser*, 266 U. S. 236, 241; *Lawlor* v. *National Screen Service*, 349 U. S. 322, 326; *U. S.* v. *International Building Co.*, 345 U. S. 502, 504; and *Partmar Corp.* v. *Paramount Corp.*, 347 U. S. 89, 102-03.

Judge Murphy compared the *Paramount* judgment with Goldwyn's complaint to determine if anything involved in this case had been "distinctly put in issue and directly determined" in *Paramount*, concluding that there was none and that the judgment in that case was not admissible.

The court below, however, misconstrued the decision of this Court in *Emich*. It seemed to think that—because certain findings of fact and conclusions of law in *Paramount* would be an estoppel as against Twentieth Century-Fox and National in a subsequent action against them by the United States on those same issues—plaintiff was entitled to the same estoppel although its private right case was entirely different. The court said (App. A, 101a):

> "But the *Paramount* case was tried to the court without a jury and detailed findings of fact and conclusions of law were made and obtained finality when

> thereafter sustained on appeal. As to each of these findings of fact and conclusions of law, Twentieth Century Fox and National would be estopped in any subsequent action against them by the Government. Plaintiff was accordingly entitled, under section 5, to introduce in evidence any of the *Paramount findings and conclusions which were adverse to Twentieth Century Fox or National*, and which are *relevant* to any of the issues in the Goldwyn case, *as prima facie evidence supporting plaintiff's position on those issues.*" (Emphasis supplied)

This holding was clearly erroneous. Obviously both Twentieth Century-Fox and National would be estopped by the findings of fact and conclusions in a subsequent Government suit on the same issues. That, however, is not the test. The test is whether Twentieth Century-Fox and National would be estopped to litigate the claims asserted by Goldwyn if the United States instead of Goldwyn were plaintiff in this case. Nothing could be clearer than the fact that no claim involving any alleged damage to Samuel Goldwyn with respect to any picture produced by him was distinctly put in issue or directly determined in the *Paramount* case. Nor did the Government assert or put in issue for determination any claim that the defendants here conspired to pay Goldwyn inadequate film rentals. Clearly no estoppel arose as to any issue raised by Goldwyn's complaint here.

The decision which most clearly points up the error of the court below is *Eagle Lion Studios* v. *Loew's, Inc.*, 141 F. Supp. 658 (S. D. N. Y. 1956), affirmed, 248 F. 2d 438 (2nd Cir. 1957), affirmed, 358 U. S. 100. In that case the plaintiff Eagle Lion Studios was an "independent" producer and distributor as those terms were defined in the *Paramount* complaint. The action was brought against all eight of the *Paramount* case defendants, including the RKO and Loew's circuits of theatres. When the case came on for trial, six of the distributors were

dismissed because money damages were not sought from them. The complaint, however, charged all the *Paramount* case defendants with conspiring against plaintiff. The defendants RKO and Loew's had been found in *Paramount* to have conspired to suppress competition between them in the New York City market for the pictures distributed by the defendants in *Paramount*.* Plaintiff in *Eagle Lion* claimed, as does Goldwyn, that it had been discriminated against and had received inadequate film rentals. The District Court defined the issue as follows (141 F. Supp. 658, 660):

> "1. Did the defendants combine and conspire in violation of the anti-trust laws of the United States to exclude the plaintiffs from the opportunity of licensing on a competitive basis their feature motion pictures to Loew and RKO theatres which exhibit feature motion pictures in the New York metropolitan area on runs subsequent to first run Broadway?"

That was precisely the issue tendered by Goldwyn. The District Court held that the *Paramount* findings and decrees were not relevant and that the specific findings as to RKO and Loew's would not constitute an estoppel if the Government had been plaintiff instead of *Eagle Lion*.

The principal question on appeal was whether the District Court had erred in its construction of the *Paramount* judgment. In affirming, the Second Circuit held that the *Paramount* judgment did not create an estoppel and that no matter complained of by *Eagle Lion* had been distinctly put in issue and directly determined in *Paramount* (248 F. 2d 438, 443-4):

> "The appellants contend that the construction they argue for is the only reasonable inference to be drawn from the Paramount finding and conclusion quoted above. In so doing, however, they misconceive the

*The findings against RKO and Loew's with respect to their division of the New York City market were the only specific findings of a local conspiracy in the *Paramount* case.

> import and applicability of section 5. In determining, under that section, the effect of a judgment in a prior anti-trust suit it is not our function to consider inferences, whether reasonable ones or not, that might be drawn from the language of the prior judgment. Under section 5 a judgment in a prior suit is *prima facie* evidence 'as to all matters respecting which said judgment * * * would be an *estoppel as between the parties thereto* * * *' (Emphasis added.) Thus, in construing a prior judgment for purposes of this statute, the court in the subsequent action does not sit as a trier of fact, *i.e.*, it does not have wide license to draw inferences from the judgment and record in the prior litigation."

Pointing out that the court was circumscribed by the relatively narrow limits of the doctrine of estoppel and quoting the principles of law set out above from *Emich*, the court continued (p. 444):

> "Subsequent to the Emich decision, this court stated in Monticello Tobacco Co. v. American Tobacco Co., 2 Cir., 1952, 197 F. 2d 629, 631-632 (per Judge Clark):
>
> > '* * * whatever is crucial to the treble-damage case and is not *distinctly determined* in the previous government suit must be proven by direct evidence. Dipson Theatres v. Buffalo Theatres, 2 Cir., 190 F. 2d 951, 958, certiorari denied 342 U. S. 926, 72 S. Ct. 363 [96 L. Ed. 691]. Section 5 does not permit a haphazard use of a criminal judgment merely for its aura of guilt, or 'to imply new wrongdoing from past wrongdoing.' Hastie, C. J., dissenting in Milgram v. Loew's, Inc., 3 Cir., 192 F. 2d 579, 595. See also Note, 65 Harv. L. Rev. 1400, 1404-1407. (Emphasis added)."

In both *Goldwyn* and *Eagle Lion*, the basis of the complaint was payment by the defendants of inadequate film rentals. *Eagle Lion*, however, presented a far more persuasive case for admissibility than *Goldwyn*. For, unlike Goldwyn, the

plaintiff Eagle Lion Studios was by definition an "independent" as that term was used in *Paramount*, an "independent" against whom the alleged predatory and discriminatory activities of the defendants were directed. Eagle Lion Studios had no connection by stock ownership or by contract or otherwise with the *Paramount* case defendants. Moreover, unlike this *Goldwyn* case, all the *Paramount* defendants were named as defendants and the six distributors which were dismissed remained charged as co-conspirators. There were no non-*Paramount* case defendants in *Eagle Lion*. In addition there were specific findings in *Paramount* with respect to local restraints in New York by the defendants RKO and Loew's. The courts, nevertheless held that there was nothing in the *Paramount* case which was distinctly put in issue and directly determined which would have constituted an estoppel in *Eagle Lion* if the United States had been substituted as plaintiff. The final judgment in *Paramount* was not admissible.

The decision of the Second Circuit in *Eagle Lion* and its significance as a precedent here was extensively briefed in the court below. Yet, inexplicably, the court below chose to ignore it completely. At no place in its opinion is there any recognition that *Eagle Lion* exists.

Not only is the decision in *Eagle Lion* by the Second Circuit in direct conflict with the decision of the court below in this *Goldwyn* case, but *Eagle Lion* reflects the prevailing view in other circuits as well. *Monticello Tobacco Co.* v. *American Tobacco Co.*, 197 F. 2d 629 (2nd Cir. 1952), *cert. den.* 344 U. S. 875; *Paramount Film Distributing Corp.* v. *Village Theatre*, 228 F. 2d 721 (10th Cir. 1956); *Park Neponset Corporation* v. *Smith*, 258 F. 2d 452 (1st Cir. 1958); and *Buckhead Theatre Company* v. *Atlanta Enterprises, Inc.*, 327 F. 2d 365 (5th Cir. 1964).

In the *Park Neponset* case, for example, there were 16 defendants, eight of which had been defendants in the *Paramount* case. Among the other eight non-*Paramount* case defendants

were two individuals who were members of a local partnership operating the Norwood Theatre in Norwood, Massachusetts. Plaintiff operated a theatre in East Walpole, Massachusetts. The District Court refused plaintiff's offer of the findings of fact, conclusions of law and decrees entered against six of the defendants in the *Paramount* case. In affirming, the Court of Appeals said (p. 456):

> "While plaintiff alleged that the Norwood Theatre was able to exert undue influence upon the distributors and receive its favorable clearance because it was a member of an independent theatre circuit, there is not the slightest evidence of the exertion of this power through master contracts and franchises. In any event, the Paramount decrees are irrelevant to a subsequent conspiracy between the operators of the Norwood Theatre and the distributors as the former were not parties to those decrees. Thus viewed in the context of the evidence presented by the plaintiff, the district judge's exclusion of the Paramount decrees was not error."

Finally, as we have indicated in Point I above, the Second Circuit in *Dipson Theatres* v. *Buffalo Theatres*, 190 F. 2d 951, also held that the plaintiff there could not have benefit of the judgment in *Paramount* because the parties in the private right action were not the same as in the Government action. The parties here obviously are not the same. The judgment in *Paramount* does not and could not constitute *prima facie* evidence of any matter in this case.

III. Did Petitioners Waive the California One-Year Statute of Limitations, although Pleading it as a Partial Defense, because the District Court Had Previously Granted Petitioners' Motion for Summary Judgment Based on the Three-Year Statute?

Defendants' motion in the District Court for partial summary judgment dismissing certain of plaintiff's claims as barred by the California statutes of limitations was made in

June, 1956.* Defendants had pleaded in their answer the bar of both the California one-year statute and the California three-year statute. In June, 1956, it was assumed by lawyers and judges alike that the applicable statute was the three-year statute, Section 338(1) of the California Code of Civil Procedure, rather than the one-year statute, Section 340(1) of the California Code. There had never been a flat holding by any of the District Courts of California or by the Ninth Circuit itself with respect to the applicable statute. The Ninth Circuit, however, had had before it three cases in which all parties and the court had assumed that the statute was three years: See *Burnham Chemical Co.* v. *Borax Consolidated,* 170 F. 2d 569, *Suckow Borax Mines Consol.* v. *Borax Consolidated,* 185 F. 2d 196, and *Steiner* v. *20th Century-Fox Film Corporation,* 232 F. 2d 190.** The petitioners' motion was based upon the foregoing decisions of the Ninth Circuit, although at no time did petitioners concede that the one-year California statute was not applicable.

Judge Murphy's decision granting summary judgment was thus based upon the California three-year statute.

After this case had been tried before Judge Murphy and had been decided by Judge Harris upon the record made before Judge Murphy, and while defendants' appeal was pending in the court below, Judge William C. Mathes in the Southern District of California rendered his decision in *Leh* v. *General Petroleum Corp.,* 208 F. Supp. 289 (S. D. Calif. 1962), to which we have previously adverted. After an exhaustive consideration of the California state court decisions he determined

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*The complaint in this action was filed on May 16, 1950. It alleged claims for inadequate film rentals with respect to the twenty-seven Goldwyn-produced pictures going back as far as 1937.

**In none of the cases before the Ninth Circuit was the time period —one or three years—a material factor in the court's decision. And, as we have pointed out, two of the defendants here were parties defendant in *Steiner* when the court indicated that the three-year statute applied in anti-trust actions.

that the applicable statute in private anti-trust actions was the California one-year statute. This was the first direct holding by any Federal Court in California with respect to the applicable statute. Leh appealed. That appeal was argued six months before the hearing of the appeal in this case.

Defendants in their briefs on appeal in the court below directed the attention of the court to Judge Mathes' decision in *Leh* and to the fact that the decision was *sub judice* before the court below. Defendants further urged that if the District Court's decision in *Leh* was affirmed, it was applicable and available to the defendants in this *Goldwyn* case. Defendants further directed the attention of the court below to authorities holding that, under the circumstances here present, there had been no waiver of the point by the defendants and that they were not estopped to raise it.

It was not until ten weeks after the decision here and three weeks after the petition for a re-hearing was denied that the Court of Appeals below affirmed Judge Mathes's decision. Thus, it is now authoritatively established that the applicable California statute in treble damage actions is the one-year statute. F. 2d

The court below nevertheless held that defendants had waived and abandoned the one-year statute by making their motion for summary judgment based on the three-year statute (App. A, 78a-79a):

> "We do not agree. If defendants had urged such a view in the district court they would be in a position to assert it here, even if it involved an overruling of our decision in *Steiner*. But having invited the asserted error which they contend results from application of the three-year statute, defendants are not now in court on that issue. The view just stated, which is applicable with regard to appellate adjudication generally, is especially applicable with regard to a defense, such as the statute of limitations, which is waived unless asserted.

> "In order to preserve the point for review defendants were not required to request a finding of fact or conclusion of law dealing with the one-year statute. As defendants point out, Rule 52(a), Federal Rules of Civil Procedure, dispensed with the necessity for such requests in order to preserve a point for review. But defendants were required to adhere to the defense of the one-year statute which they advanced in their answer, so that the court would be obliged to rule thereon. Instead, defendants in effect abandoned that defense, as a result of which there was no ruling upon it. The whole trial was had on the theory, asserted by defendants in their motion for partial summary judgment, that the three-year statute is applicable."

This decision by the court below is in direct conflict with two decisions by the Second and Seventh Circuits. *Bertha Building Corp.* v. *National Theatres Corp.*, 269 F. 2d 785, 787 (2nd Cir. 1959), *cert. den.* 361 U. S. 960, and *Emich Motors Corp.* v. *General Motors Corp.*, 229 F. 2d 714 (7th Cir. 1956).

In *Bertha Building*, defendant pleaded as bars to the action the statute of limitations of the State of New York, where the action was commenced, and of California, where the cause of action arose. If the defendant could have been sued in California, from July 4, 1935, to July 20, 1938, plaintiff's cause would have been barred by both the one-year and the three-year statute of limitations of California. If the New York statute was the three-year statute the action also would have been barred in New York. For purposes of the case, however, it was conceded that the three-year California and the six-year New York statutes applied. The New York decisions had uniformly indicated that the New York statute was six years. It was immaterial which New York statute applied if defendant could have been sued in California. The District Court held that the action was barred by the three-year statute of California. On the appeal, the Court of Appeals reversed the decision on the ground that plaintiff was entitled to a jury

trial on the question whether defendant could have been sued in California during the relevant period. 248 F. 2d 833. Shortly after that decision, District Judge Levet in the Southern District of New York ruled that the New York three-year statute applied to an action for treble damages under the antitrust laws. The defendant then moved for summary judgment dismissing the complaint as barred by the three-year New York statute.* District Judge Zavatt in the Eastern District of New York, however, held that defendant was estopped by the law of the case from asserting that the three-year statute applied. The case was certified to the Court of Appeals for the Second Circuit. That court held that defendant had not waived the right to assert that the applicable statute was three years instead of six years, saying (269 F. 2d 785, 787-88):

> "The question presented is really whether defendant is precluded by waiver and estoppel from contending that the action is barred by the three year New York statute of limitations. This question involves the public policy against piecemeal litigation and the timeliness of the motion. The problem is sometimes described as governed by 'the law of the case.' It was so described in *Sorensen* v. *Pyrate Corporation*, 9 Cir. 65 F. 2d 982, 984-5. Judge Zavatt cited that case in support of his conclusion that 'The defendant should not now be permitted to ground a motion for summary judgment upon a contention which might have been presented, and which is contrary to its concession upon the trial and the appeal.' The *Sorensen* case is distinguishable. There, after trial on the merits and an appeal, in which the judgment was reversed and the cause remanded for determination of the plaintiff's damages, the defendant tried to plead that the contract was void because of the plaintiff's fraud—a defense which

*In another action the Court of Appeals had held as a matter of law that the defendant could have been sued in New York for more than three years prior to July 20, 1938.

> might have been raised when the case was tried on the merits. The court held that the law of the case precluded the tardy presentation of such factual defense. Here, defendant's motion raises a question of law only which, if sustained, would prevent the necessity of a jury trial on the suability of defendant in California as well as any litigation on the merits of plaintiff's cause. Under the particular circumstances of this case, we do not think that the defendant should be estopped. Cf. *Emich* v. *General Motors Corp.*, 7 Cir., 229 F. 2d 714, 718. Plaintiff has cited no authority for estopping a party from raising a question of law under such circumstances."

The same conclusion was reached in the *Emich* case when it was remanded. Defendant there moved to amend its answer to plead as a defense the two-year Illinois statute of limitations. Leave to amend was granted by the District Court. 15 F. R. D. 354 (N. D. Ill. 1953). The action had been filed in 1941. At that time it was generally thought that the applicable statute of limitations was five years. No statute of limitations was pleaded as a bar to recovery. After the trial and appeals in *Emich*, the Seventh Circuit in a momentous decision held that the applicable statute of limitations of Illinois for treble damage actions was the two-year statute. *Hoskins Coal & Dock Corp.* v. *Truax Traer Coal Co.*, 191 F. 2d 912 (7th Cir. 1951), *cert. den.* 342 U. S. 947. The two-year statute barred Emich's claim. After leave to amend had been granted, defendant moved for and was granted a summary judgment dismissing Emich's claim. On the appeal, 229 F. 2d 714 (7th Cir. 1956), Emich advanced the precise claim advanced by Goldwyn below. The court stated that claim to be (p. 716):

> "In this court plaintiffs insist that defendants by their omission to plead the statute of limitations prior to the first trial waived and relinquished that plea for all time, and that it was, therefore, not within the discretion of the District Judge to permit the plea."

In rejecting plaintiff's claim that the defendant had waived the two-year statute by not pleading it, the court said (p. 718):

> "The plaintiffs also argue on this point that defendants' excuse for not having sooner pleaded the two year statute of limitations was insufficient; that defendants were not entitled to rely on two decisions of the United States District Court for the Northern District of Illinois, Eastern Division, which had held that the Illinois five year statute of limitations was applicable to an action for treble damages under the anti-trust laws. It is conceded that there was no decision either of the Supreme Court or of this court holding the two year statute applicable prior to our decision in Hoskins Coal & Dock Corp. v. Truax Traer Coal Co., 7 Cir., 191 F. 2d 912. The Supreme Court denied certiorari in that case on March 3, 1952. Thereafter the defendants filed their motion to amend their answer by adding the defense of the two year statute of limitations. Under such circumstances we cannot say that the action of the trial judge in permitting the defendants to amend their answer was clearly erroneous and therefore amounted to an abuse of discretion."

It is thus apparent that the decision by the court below that defendants had abandoned the one-year statute is in direct conflict with the decision of the Second Circuit in *Bertha Building* and with the Seventh Circuit in *Emich*. Indeed, unlike *Emich*, petitioners here did plead the one-year California statute as a partial defense. And they made no concession for the purpose of the case or otherwise, as in *Bertha Building*, that only the three-year statute applied. They should not now be barred from having the benefit of the one-year statute because they relied upon what was then thought by bench and bar alike to be the applicable law. This Court should now resolve the conflict between the court below and the Second and Seventh Circuits.

IV. May a Participant in and Beneficiary of a Conspiracy in an Antecedent Government Action Recover against His Alleged Co-Conspirators?

We have heretofore noted Goldwyn's position with respect to the claims of the Government in the *Paramount* case. We here direct particular attention to his relations with the two defendants in *Paramount*, which acted as his distributing agents.

As we have said, Goldwyn was a one-fifth owner of the defendant United Artists Corporation until March, 1941, when he became affiliated with another *Paramount* case defendant, RKO Radio Pictures, Inc., under a written contract of agency for the distribution of pictures produced by him. In all his distribution contracts with United Artists and RKO, Goldwyn retained ultimate control over the sales and distribution policies of the pictures produced by him. His contract with United Artists of July 22, 1936, provided (Clerk's Transcript, 137):

> "(c) The Producer reserves the right to control and determine the sales and distribution policy to apply and govern its own photoplays, and to direct the Distributor to license the exhibition of its own photoplays with each exhibitor, upon such terms and conditions as to the Producer may seem fit.
>
> "(d) The Distributor agrees not to enter into any franchise agreement for any theatre or group of theatres, or for any territory or country without the written consent of the Producer first obtained."

Similar provisions vesting ultimate control over the Goldwyn pictures in *Goldwyn* were contained in all his contracts with United Artists and RKO for the distribution of his pictures. No license agreement solicited by either United Artists or RKO could become final until approved by Goldwyn. These

distributors acted as Goldwyn's sole agents for the collection of film rentals and shared such rentals with Goldwyn. United Artists, for example, received twenty-five per cent of the film rental and RKO from seventeen and one-half to twenty per cent.

The acts of United Artists and RKO in distributing the Goldwyn pictures were, in fact, the acts of Goldwyn as principal. He is chargeable with those acts to the same extent as would be his agents. So far as the *Paramount* case is concerned, Goldwyn was in complete privity with United Artists and RKO in the licensing of his pictures. This conclusion is inevitable. It is based upon established princples of the law of agency and conspiracy which are set forth in the following cases: *United States* v. *Gooding,* 12 Wheat. (25 U. S.) 460, 469; *United States* v. *The Brig Burdett,* 9 Pet. (34 U. S.) 682, 683; *Hoffman* v. *Hancock Mut. Life Ins. Co.,* 92 U. S. 161; *United States* v. *American Column & Lumber Co.,* 263 Fed. 147 (W. D. Tenn. 1920), *affirmed* 257 U. S. 377; *American Tobacco Co.* v. *United States,* 147 F. 2d 93 (6th Cir. 1944), *affirmed* 328 U. S. 781; *Dextone Co.* v. *Building Trades Counsel,* 60 F. 2d 47 (2nd Cir. 1932); *Giusti* v. *Pyrotechnic Industries,* 156 F. 2d 351 (9th Cir. 1946), *cert. den.* 329 U. S. 787. These principles of law were not modified by Section 5 of the Clayton Act.

Goldwyn necessarily stands in the same position as United Artists and RKO in bringing this action. The questions are these: If RKO, a major *Paramount* case defendant, sued another *Paramount* defendant charging violation of the anti-trust laws, could RKO assert that its claim was based on matters complained of by the Government in Paramount and thus maintain a suit against its co-conspirators even to the extent of claiming the benefits of Section 5 of the Clayton Act? If RKO, a producer and distributor which also operated a large circuit of theatres and which was directly involved as

a defendant in every phase of the *Paramount* case, were substituted as plaintiff here, instead of Goldwyn, could there be any question but that RKO would be barred from maintaining such an action, to say nothing of having recourse to Section 5?

These questions would seem to be rhetorical but the court below held, as we have noted above at page 32, that Goldwyn could maintain his suit against two of the *Paramount* case defendants and that he could have the benefit of Section 5, saying that the fact Goldwyn had been a defendant in *Paramount* "has nothing whatever to do with the applicability of section 5 in the *Goldwyn* case." (App. A, 102a).

Incredible as it may seem the court below also assumed that RKO, against whom (with Loew's) more specific findings of violations of the anti-trust laws were made in the *Paramount* case than against any other producer-exhibitor-distributor, had been subjected to pressure and economic duress by the petitioners here and that Goldwyn's relationship with RKO did not preclude him from maintaining this action. The decision on this point is in conflict with decisions of at least three of the other circuits.

A person who has been a party to or a participant in a conspiracy to effectuate an unlawful end or purpose may not in subsequent litigation have any larger rights than his co-conspirators would have against him—indeed, no rights at all. In *Northwestern Oil Co.* v. *Socony-Vacuum Oil Co.*, 138 F. 2d 967 (7th Cir. 1943), *cert. den.* 321 U. S. 792, plaintiff sued to recover damages for violations of the Sherman Act. The defendants had previously been indicted and convicted for violations of the Sherman Act in the Western District of Wisconsin, which conviction was affirmed in *U. S.* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150. Plaintiff relied upon the judgment of conviction in the Government case as a basis for recovery. At the close of plaintiff's evidence, defendants moved for a directed verdict upon two grounds, (1) that plain-

tiff had failed to prove damages and (2) that plaintiff had participated in the unlawful conspiracy. The trial court granted defendants' motion upon the first ground and found it unnecessary to pass upon the second. On appeal, however, the Court of Appeals, in affirming, considered the second ground saying (p. 971):

> "It was not necessary for the District Court to pass upon the further question raised, nor is it essential here, but we think it not amiss to say that the court would been justified in directing a verdict upon the second ground, namely, that plaintiff participated in the illegal conspiracy. This combination was stamped with disapproval by the Supreme Court in United States v. Socony-Vacuum Oil Co., supra, 310 U. S. at page 221, 60 S. Ct. at page 843, 84 L. Ed. 1129, in these words:
>
> > 'Any combination which tampers with price structures is engaged in an unlawful activity. * * * Under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se.'
>
> "Having participated in this illegal undertaking, plaintiff may not recover; where parties stand in pari delicto, the law leaves them where it finds them. Maltz v. Sax et al., 7 Cir., 134 F. 2d 2, 5; Eastman Kodak Co. v. Blackmore, 2 Cir. 277 F. 694, 700, 701; Victor Talking Mach. Co. v. Kemeny, 3 Cir., 271 F. 810, 816; Bluefields S. S. Co. Limited v. United Fruit Co., 3 Cir., 243 F. 1, 13; Tilden et al. v. Quaker Oats Co., et al., 7 Cir., 1 F. 2d 160; Bishop v. American Preservers Co., et al. C. C. N. D., Ill., N. D., 105 F. 845; Higgins v. McCrea, 116 U. S. 671, 6 S. Ct. 557, 29 L. Ed. 764; Harriman v. Northern Securities Co., 197 U. S. 244, 296, 25 S. Ct. 493, 49 L. Ed. 739. As said in Victor Talking Mach. Co. v. Kemeny, 3 Cir., 271 F. 810, 816:

> "* * * assuming the business system or combination established by the defendant for the sale of its products was in violation of the Sherman Anti-Trust Law, the plaintiff, having been a part of the system or combination and thereby having participated in the violation of the law, cannot be heard to complain of injury to his business resulting therefrom * * *."

The court considered plaintiff's participation in the price maintenance scheme found unlawful in the Government action, saying (pp. 969-70):

> "Its proof further disclosed that, in the meetings and conferences as a result of which stabilization of prices came about, resulting in increased cost of gasoline, plaintiff's officers participated and cooperated; that they were well advised that the program was intended to establish an increased tank car quotation in order to maintain retail prices in its territory and that plaintiff's officers requested its employees to cooperate with the participants in promoting the plan. The letters written by its officers and the testimony clearly establish that plaintiff was an active agency in working out with defendants and others the scheme of which it now complains and in raising and maintaining prices from which it now claims damage has accrued to it."

It should be noted that of all the trade practices found to be unlawful in *Paramount*, none was more strongly condemned by this Court or the Expediting Court than was the provision in contracts which stipulated the minimum box office prices to be charged by an exhibitor. 334 U. S. 131, 141-44; 66 F. Supp. 323, 334-41. The pictures produced by Goldwyn and distributed for him by RKO and United Artists were licensed to exhibitors under contracts which specified the minimum price to be charged. Indeed, RKO came in for special attention by the Expediting Court in the price fixing phase of the conspiracy found to be unlawful. Also, Govern-

ment's Exhibit 199 (App. C, 345c-71c) was a master agreement between United Artists as a distributor and an indirect subsidiary of National as an exhibitor and covered pictures distributed by United Artists for Goldwyn. With respect to that Exhibit, the Expediting Court said (66 F. Supp. 323, 338):

> "It contained the following clause: 'Where pictures are licensed on a percentage rental basis the scale of admission prices to be not less than the scale of admission prices charged to view pictures of comparable quality exhibited by the exhibitor and distributed by distributors other than United Artists.' The foregoing quotation shows an acquiescence of United Artists in admission prices fixed by any other distributor and an adherence to those prices in its own licenses. Plaintiff's Exhibit 199."

In *Eastman Kodak Co.* v. *Blackmore*, 277 Fed. 694 (2nd Cir. 1921), the defendant had previously been found to have violated the Sherman Act in an antecedent Government action (230 Fed. 522, appeal dismissed, 255 U. S. 578). In the action by the dealer Blackmore, defendant interposed the defense that plaintiff had participated in and was a beneficiary of the alleged unlawful conspiracy. In holding that plaintiff, as a participant in the unlawful acts alleged, could not recover, the court said (pp. 700-01):

> "In brief, assuming that what defendant did in conjunction with others amounted to a conspiracy under the act, and that defendant succeeded in obtaining a monopoly contrary to the act, plaintiff at all times derived the advantages and accepted the benefits which flowed from that conspiracy and that monopoly.
>
> "It is fundamental that in the same conspiracy all participants are conspirators, whether the part they play be great or small. They cannot receive some of the fruits and then be held blameless for other acts which they may not have initiated but whose benefits

> they have received. On the evidence in this case, we are unable to find any act of defendant or of plaintiff which, as matter of law, separates them from each other as participants in the same conspiracy and which frees plaintiff from being in pari delicto with defendant."

The significance of these cases is apparent because in both the *Northwestern Oil* and *Eastman Kodak* cases neither of the respective plaintiffs had been a party to the antecedent Government action at any stage of the proceedings. Goldwyn's participation in the *Paramount* case conspiracy went far beyond the acquiescence of the plaintiffs in *Northwestern Oil* and *Eastman Kodak*. He always controlled the distribution practices relating to the Goldwyn pictures and all contracts were approved by both Goldwyn and his distributing agent, whether RKO or United Artists. Those practices were held by this Court in *Paramount* to have been part of the over-all conspiracy condemned. Plainly, it is not necessary to have been a formal party to the antecedent Government action to be barred from asserting a claim against co-conspirators, participants and fellow beneficiaries.

The decision of the court below is also in conflict with decisions of the Court of Appeals for the Third Circuit in *Bluefields S. S. Co.* v. *United Fruit Co.*, 243 Fed. 1 (3rd Cir. 1917), and *Victor Talking Mach. Co.* v. *Kemeny*, 271 Fed. 810 (3rd Cir. 1921). In the *Bluefield* case, the court stated the law in that Circuit, as follows (p. 18):

> "If the Sherman Act was violated by the combination in which the Bluefields Company participated, and injury to that company was a natural consequence, then the case comes within the well settled principle that where a criminal combination is made or a criminal enterprise is undertaken by two parties and either party violates the agreement with injury to the other, the law will afford the injured party no redress but will

leave him as it finds him. In pari delicto potior est conditio defendantis."

The District Court (Judge Murphy) found as a fact that Goldwyn was involved in the *Paramount* case as a defendant and as a participant and beneficiary to such a degree that he could not avail himself of the benefits of Section 5 of the Clayton Act. It follows that such participation as a defendant and beneficiary of the *Paramount* case conspiracy precludes Goldwyn from maintaining this action.

In this connection, it should also be noted that Goldwyn's affiliation with RKO and United Artists was voluntary. There is no element of economic pressure or coercion that forced Goldwyn to distribute through those companies. As a one-fifth owner of United Artists, Goldwyn could hardly advance that claim and, indeed, he makes no claim that he was forced to distribute his pictures either through United Artists or RKO. There is also no claim that either United Artists or RKO was a victim of the alleged combination and conspiracy among the petitioners here and the McNeil and Naify defendants.

Goldwyn stands in no better position to maintain this action than would RKO or United Artists if either were substituted as plaintiff in Goldwyn's stead. Neither they nor he may take advantage of Section 5 of the Clayton Act or in any other way maintain this suit. The decision below is in conflict with at least three other circuits. This Court should now resolve that conflict.

CONCLUSION

The questions here presented for review by this Court represent deep conflicts between the circuits. Important public policy considerations with respect to the administration of the anti-trust laws are inherent in each of the questions, none of which has been but all of which should be, settled by this Court.

We respectfully submit, therefore, that this Court should grant the petition and issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to review and settle the questions here presented.

Respectfully submitted,

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Of Counsel

May 20, 1964

Opinion by Judge Murphy

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

No. 29,756

SAMUEL GOLDWYN PRODUCTIONS, INC.,

Plaintiff,

v.

FOX WEST COAST THEATRES CORPORATION, ET AL.,

Defendants.

ORDER

These are two motions in an anti-trust treble damage action brought by Samuel Goldwyn Productions, Inc. against Twentieth Century-Fox Film Corporation, National Theatres Corporation, Fox West Coast Theatres Corporation and Fox West Coast Agency Corporation (hereafter referred to, respectively, as Twentieth Century-Fox, National, Fox West Coast Theatres, and Fox West Coast Agency). The original suit by the plaintiff named additional defendants for whom a separate trial has been ordered.

This suit was filed on May 16, 1950. The first motion before the court is defendants' motion for a partial summary judgment dismissing all claims which accrued prior to

May 16, 1947 on the ground that they are barred by the applicable statute of limitations. The applicability of the three year statute of limitations of Cal. Code of Civil Procedure, sec. 338(1), see *Steiner* v. *20th Century-Fox*, 232 F. 2d 190, 194 (9th Cir. 1955), to this proceeding is not in issue on this motion, and may be assumed for the purposes of this motion to be undisputed.

Plaintiff argues that the statute of limitations was suspended by virtue of Section 5 of the Clayton Act, Act of October 15, 1914, c. 323, 38 Stat. 731, 15 U. S. C. A. sec. 16, which provides:

> "Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof."

The prior proceeding by the United States upon which plaintiff relies is *United States* v. *Paramount Pictures, Inc., et al.*, Equity No. 87-273, (hereafter referred to as the *Paramount* case) filed in the United States District Court for the Southern District of New York on July 20, 1938, and not finally terminated until after three years preceding the filing of the complaint in the instant action on May 16, 1950. Of the defendants here, only Twentieth Century-Fox and National were defendants in the Paramount case, and therefore the statute of limitations could, of course, only be suspended as to them. *Momand* v. *Universal Film Ex-*

change, 172 F. 2d 37, 48 (1st Cir. 1948), cert. den. 336 U. S. 967 (1949). The issue before the court on this motion, therefore, is whether the statute of limitations is suspended as to defendants Twentieth Century-Fox and National between July 20, 1938 and May 16, 1947.

The proper application of Section 5 of the Clayton Act has been repeatedly spelled out by the cases. See, e.g., *Momand* v. *Universal Film Exchange*, 43 F. Supp. 996, at 1011, 1013 (D. C. Mass. 1942), aff'd. 172 F. 2d 37 (1st Cir. 1948), cert. den. 336 U. S. 967 (1949). In order for the statute of limitations to be suspended by Section 5 of the Clayotn Act, the party seeking the suspension must in his complaint allege not only the same conspiracy as that alleged by the government in the prior suit, but also the use of the same means to achieve the same objectives by the same defendants. *Steiner* v. *20th Century-Fox Film Corp.*, supra, at 196, 198. In the *Steiner* case the Court of Appeals had occasion to state the rule as follows:

> ". . . The same means must be used to achieve the same conspiracy by the same defendants in order to toll the running of the statute of limitations under 15 U. S. C. A. sec. 16. Whether the statute of limitations bars the action in question may be determined in advance of trial. . . ." (Id. at 198).

The Court then went on to make the point that a mere similarity in some of the means used in pursuance of the conspiracy would not suffice to suspend the statute of limitations. It said:

> ". . . The trial court, after hearing the parties . . . granted the appellees' motion to dismiss, for the matters complained of here are not identical with

those alleged in United States v. Paramount, supra. Appellant did state similar threats of building competing theatres and withholding first-run motion pictures. However, in United States v. Paramount, supra, these threats were allegedly used for different purposes and objectives than in the present case. . . ."

A comparison of the essence of the complaint in the *Paramount* case with the essence of the complaint of plaintiff here discloses two substantially different conspiracies, by different sets of conspirators, for quite different objectives, and employing in large part different means.

The *Paramount* complaint (amended and supplemental complaint, filed November 14, 1940) charged the eight principal motion picture companies with conspiracies unreasonably to restrain and monopolize the production, distribution and exhibition of motion pictures. The allegations relating to the effect of these conspirators upon the industry deal with independent, non-affiliated, producers, distributors, and exhibitors, against whom the conspiracy was directed. So far as independently produced films are concerned, the government charged that the conspiracy was effectuated "by concertedly excluding independently produced films from affiliated theatres". (Par. 152, Amended and Supplemental Complaint, *Paramount* case). It becomes entirely clear from a reading of the government's amended and supplemental complaint in the *Paramount* case that Goldwyn, the present plaintiff, was there alleged to be a "major producer", or "one which produces motion pictures for release by a major distributor pursuant to a prior understanding or agreement with such major distributor". (Par. 15(b), Amended and Supplemental Complaint, *Paramount* Case), and not an "independent producer" or "independent dis-

tributor", against whom the conspiracies charged by the government in the *Paramount* case were alleged to be directed. Insofar as the government identified the "target area" of the conspiracy in its complaint and answers to interrogatories, it is clear that Goldwyn was not within that "target area", see *Karseal Corporation* v. *Richfield Oil Corporation*, 221 F. 2d 358, 362 (9th Cir. 1955), and indeed was charged with being a participant and beneficiary, to some extent at least, in the conspiracies, by reason of his affiliation with United Artists, one of the defendants in the Paramount case, and by his knowledge of and agreement and consent to the distribution practices of the defendants in the *Paramount* case (Pars. 84, 86, Amended and Supplemental Complaint, *Paramount* case). In the words of Judge Wyzanski in the *Momand* case, supra, ". . . in none of the pleadings in those proceedings is there any reference to . . . alleged wrongs directed specifically against . . . this plaintiff. . . ." (43 F. Supp. 996, 1012 (D. C. Mass. 1942).

The essence of the Goldwyn complaint now before the court is a conspiracy, participated in by two of the *Paramount* defendants, but also by others *not* parties to the *Paramount* case or the conspiracies there charged unreasonably to restrain trade in the motion picture industry which has had the effect of damaging him by depressing the film rentals which he might have obtained from defendants in a free and competitive market.

Enough has been said to show that the tests of the *Steiner* case, supra, are not satisfied by the Goldwyn complaint.

The motion of defendants for partial summary judgment is granted.

The second motion before the court is one by plaintiff to determine the admissibility of the decree in the *Para-*

mount case pursuant to another provision of Section 5 of the Clayton Act, supra, which, provides the following:

> "A final judgment or decree . . . rendered in any civil or criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto. . . ."

The evidentiary use which may be made of this quoted part of Section 5 has been set out in detail by the Supreme Court in *Emich Motors* v. *General Motors*, 340 U. S. 558 (1951), at pp. 568-569. It is to be determined by reference to the general doctrine of estoppel. Id., at 568. The Court said: "Such estoppel extends only to questions 'distinctly put in issue and directly determined' in the criminal proceeding". (Emich, supra, at 569). The considerations adduced above in connection with the tolling of the statute of limitations should suffice to dispose of the estoppel issue as well, since the two parts of Section 5 here in question are to be construed together. See *Sun Theatre Corp.* v. *RKO Radio Pictures*, 213 F. 2d 284, 290 (7th Cir. 1954); *Momand* v. *Universal Film Exchange*, supra. But it may be pertinent to note, additionally, that the *decision* in the *Paramount* case, as distinguished from the *complaint*, was considerably narrower as to the existence of monopolistic restraints on trade, and laid especial stress on the *collective*

power of *all* the defendants in the *Paramount* case to establish the restraints of trade on a nation wide basis only, not a local one. See *U. S.* v. *Paramount*, 334 U. S. 131, at 166-167; 85 F. Supp. 881, 893-4 (District Court, on remand from Supreme Court). In connection herewith, and in view of the different defendants in the instant case from those in the *Paramount* case, it may be pertinent to cite the comment of Judge Augustus N. Hand, the author of the opinion in the lower court in the *Paramount* case, in the case of *Dipson Theatres* v. *Buffalo Theatres*, 190 F. 2d 951 (2d Cir. 1951), cert. den. 342 U. S. 925, where the issue was whether the *Paramount* decree might be used to prove the conspiracy complained of in the *Dipson* case. Judge Hand said:

> "The fact that plaintiff now concedes that Columbia and Universal were not parties to the present conspiracy and concededly Shea and McFaul were not parties to the original Paramount action also indicates that that case is not controlling here." Id. at 958

I find that under the principles of collateral estoppel the matters complained of by Goldwyn here were not "distinctly put in issue and directly determined" in the *Paramount* case, and that the decree in the *Paramount* case is therefore not admissible in the instant proceedings. The motion of plaintiff is denied.

Dated: October 3rd, 1956.

/s/ EDWARD P. MURPHY
United States District Judge

Opinion by Judge Harris

[SAME CAPTION]

MEMORANDUM OPINION AND ORDER

This is an action tried by the Court without a jury wherein the plaintiff seeks treble damages under the anti-trust laws, against Fox West Coast Theatres Corporation, et al. The suit was filed on May 16, 1950, and after extensive pretrial discovery proceeded to trial before the late Judge Edward P. Murphy.

Prior to trial Judge Murphy made several vital and significant rulings, particularly granting defendants' motion for partial summary judgment and dismissing all claims which occurred prior to May 16, 1947, on the ground that they were barred by the applicable statute of limitations.[1] Also, that the decree in the Paramount case[2] was not admissible in the instant proceedings.

The cause proceeded to trial as against Twentieth Century-Fox Film Corporation, National Theatres Corporation, Fox West Coast Theatres Corporation and Fox West Coast Agency Corporation. Plaintiff's original suit had named additional defendants for whom a separate trial was ordered.

The trial was protracted. It commenced on the 10th day of July, 1957, and was concluded on the 14th day of January, 1958. Plaintiff and defendants called twenty-three witnesses. The trial transcript consisted of 6500 pages, ex-

[1]Samuel Goldwyn Productions, Inc. v. Fox West Coast Theatres Corp., et al., 146 F. Supp. 905.

[2]United States v. Paramount Pictures, 334 U. S. 131.

clusive of voluminous exhibits, involving a mass of economic, statistical and accounting data. At the conclusion the trial court requested the parties to prepare findings of fact and conclusions of law. The findings submitted were very extensive. References to them are made herein.

Before decision, Judge Murphy died. The cause was reassigned.

On November 19, 1959, and thereafter, counsel for the parties appeared on a pretrial conference for the express purpose of acquainting this Court with the ramifications of the litigation, the scope of the evidence adduced before the late Judge Murphy and the question whether the cause would be resubmitted on the record or whether witnesses would be called *de novo*.

The Court at the conclusion of the hearing requested additional briefing on the question of "causal relationship" and the issue of impact and continued the matter regularly until February, 1960, for argument on the merits, the Court having decided, upon stipulation of counsel, to have the cause resubmitted on the record of testimony theretofore elicited.

After extensive oral argument counsel requested time to file additional briefs and the matter was finally submitted for decision on the merits on the 1st day of September, 1960. This last submission was set aside by the Court for the reason that counsel for defendants submitted a supplemental brief. Thereafter counsel for plaintiff on the 10th day of April, 1961, filed a responsive brief and the cause is now ready for decision.

The erosive effect of the influences of both pretrial, trial and subsequent court engagements has narrowed the issues presently before the Court. The difficulties attend-

ant upon a decision in this case are not concerned with any complexity or novelty in legal application. The underlying principles have been carefully enunciated by our Circuit Court, as well as the Supreme Court of the United States.[3]

Plaintiff contends that defendants' violations of the Sherman Act and the Clayton Act through the practices charged, have injured plaintiff in its business of producing and distributing motion pictures by reason of the low rentals plaintiff was compelled to accept in the marketing of the specific pictures involved in this litigation.

Defendants deny that the film rentals negotiated by plaintiff's distributor R. K. O., were less than the product itself deserved in each instance. Defendants assert that the present litigation arises because the seller, after disposing of his product, would now like to re-negotiate on a more

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[3] *Restraint and Liability:*

United States v. Paramount Pictures, et al., 334 U. S. 131, 68 S. Ct. 915
United States v. Schine, 334 U. S. 110, 68 S. Ct. 94
United States v. Griffith, 334 U. S. 100, 68 S. Ct. 942;
United States v. Crescent Amusement Co., 323 U. S. 173, 65 S. Ct. 254

Damage:

Eastman Kodak v. Southern Photo Materials Co., 273 U. S. 359, 47 S. Ct. 400
Story Parchment v. Paterson Parchment Paper Co., et al, 282 U. S. 555, 51 S. Ct. 250
Bigelow v. R. K. O., 327 U. S. 251, 66 S. Ct. 574
Mandeville Island Farms v. American Crystal Sugar Co., 334 U. S. 219, 68 S. Ct. 996
Paradise Theatre Corp. v. Fox West Coast, et al, 264 F. 2d 602
Flintkote Co. v. Lysfjord, 246 F. 2d 368
Richfield Oil Co. v. Karseal, 271 F. 2d 709
Continental Ore Co., et al. v. Union Carbide and Carbon Corp., et al, #16,149, March 22, 1961, p. 8 (9th)

profitable basis. They deny a violation of the antitrust laws through conspiracy or monopoly and contend that plaintiff received that to which he was entitled in a competitive market.

Defendants contend that the Goldwyn product had deteriorated and that the pictures were progressively less well received in the market.[4] Also, that the law suit was brought through personal pique.

Defendants further contend that the plaintiff had outlets available other than the National Theatres Corporation (hereafter N. T. C.)[5] representing approximately 600 theatres situated strategically throughout the United States. Also, that Goldwyn "sold away" to certain of his customers and attempted to put pressure on the defendants.

The plaintiff states that the record is clear, that Goldwyn struggled against the practices of the Fox chain from the middle twenties down to date.

It is to be observed that this is not the case of an obscure, lone exhibitor striving to obtain a product on a competitive basis.[6]

Samuel Goldwyn, an outstanding producer of motion pictures and a powerful figure in the industry, came to the market in 1947-50 with seven motion pictures. His bargaining agent and distributor was R.K.O.

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[4]See Beggs' testimony, Tr. 5942: " 'Roseanna McCoy' and 'My Foolish Heart' obviously had a very small exhibition in NTC and on this basis comparison of the playoff results of these two Goldwyn pictures with other features of the same season would be highly questionable."

[5]According to the record, in May 1947 defendant NTC owned, leased or operated through direct and indirect subsidiaries 597 theatres located in 189 incorporated cities. By May 1950 the number of theatres held had decreased to 526, located in 185 incorporated cities.

[6]Carter v. Twentieth Century-Fox, 127 F. Supp. 675.

The pictures ranked among the feature motion pictures shown in the film seasons in which each was respectively released as follows:

Goldwyn Release	Rank
Walter Mitty	16
Bishop's Wife	17
Best Years (reissue)	33
Song is Born	40
Enchantment	80
Roseanna McCoy	47
Foolish Heart	52

THE QUESTION OF LIABILITY:

Plaintiff is required to prove restraint and injurious impact.

The conspiracy as outlined by plaintiff was a many faceted one to violate Sections 1 and 2 of the Sherman Act in gaining monopolistic control in the marketing areas wherein defendants owned or operated theatres. Defendants created local pockets of monopoly and joined therein a national buying combine.[7]

The Joint Alliances and Pools:

The jointly held corporations and enterprises existing between National Theatres Corporation (NTC) and putative competitors were illegal and declared such by the Supreme Court in United States v. Paramount Pictures, 334 U. S. 131, 149, and ordered divested upon the showing that the other parties were potential competitors.[8]

[7]Pltf's proposed findings, pp. 20-28, 3095.

[8]The NTC circuit was divested effective June 7, 1951.

Several of these joint arrangements were in existence during the period involved herein, to-wit: *1947 to 1950.* The impact upon the Goldwyn organization is manifest.

> "These provisions in the decree will stand. The practices were bold efforts to substitute monopoly for competition and to strengthen the hold of the exhibitor defendants on the industry by alignment of competitors on their side. Clearer restraints of trade are difficult to imagine."[9]

The Supreme Court in the Paramount case remanded the action for consideration by the District Court. Following the remand, the District Court entered an order based on the consent of the United States and Twentieth Century Fox Film Corporation dated December 17, 1948:

> "1. Plaintiff having claimed and offered evidence that certain corporations are owned jointly by National Theatre Corporation, together with an actual or potential independent exhibitor, said corporation being listed in plaintiff's proposed finding 115; and plaintiff having petitioned this court for the entry of an order requiring National Theatres Corporation to dispose of its joint interest in such corporation in order to terminate such continuing restraints of competition as may arise therefrom."[10]

The final decree of February 8, 1950, prevents the defendants from entering into joint theatre arrangements.[11]

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[9]United States v. Paramount Pictures, 334 U. S. 131, at 149. Cf. Mandeville Island Farms, Inc. v. American Crystal Co., 334 U. S. 219.

[10]Pltf's Ex. 61.

[11]Plft's Ex. 376 for id.

It is difficult, if not impossible, to delineate herein all of the alliances, agreements regarding division and allocation of product, "gentlemanly understandings," "harmonious working arrangements" and collusive conduct that permeate the vast record before the Court. On the question of restraint and impact it is not unfair to say that the orders and decrees in the Paramount case were barely made and entered when Fox set in motion, through its agents, a series of practices and transactions designed to circumvent and avoid the significant teaching of the Paramount case.

Whether these efforts to continue the monopoly were subtle and refined, or bold is of no particular moment. Suffice, that the testimony is replete with instances of conduct reminiscent of the practices condemned and proscribed by our Supreme Court.

Defendants assert that the joint alliances had no unreasonable effect on any defined market.

The following demonstrates to the contrary and is illustrative of the difficulties attendant upon the plaintiff in disposing of his product in a free, competitive market:

(a) Defendants contend that there was a substantial theatre competition in downtown Los Angeles. There were 13 Fox theatres, 2 R. K. O., 2 Franchon Marco-Paramount, 4 Warner Bros., and 3 Blumenfeld.

These asserted substantial competitors were still meeting once a week and allocating motion pictures and products down to the date of trial.[12]

The Lundgren book demonstrates a clear allocation system.[13] Examples of splitting products may be found in

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[12]Tr. pp. 3749-3753; 3761; 3768; Cf. 1917.

[13]Plf's Ex. 11 and 12; Tr. 1860-65, et seq.

San Francisco's Mission district; for Seattle, Spokane, Inglewood, etc., similar practices occurred.[14]

(b) N. T. C. or Fox West Coast did not compete in any city or town within the Naify circuit for many years. Where Fox and Naify operated theatres in the same communities they formed joint ventures or alliances and collusively split products.

Not until after the beginning of the period in this suit was the Fox-Naify combine broken up under the Paramount order of December 20, 1948.

(c) It was Fox's original policy to maintain their exhibition agreements as a secret. Otherwise, it would not be necessary to meet in parked cars on remote hillsides or in quiet offices where the products would be divided by pooling lots or drawing markers out of a hat. This, even since the Paramount decree and the commencement of the instant litigation.[15] However, the defendants contend that the plaintiff knew, or should have known, or consented to the division of products. This is not borne out by the record. Neither is the assertion that the Department of Justice had been informed by Mr. Pirosh of the arrangements. Mr. Marcus, attorney for the Department, gave negative testimony denying such knowledge or implied consent. Mr. Marcus' testimony is believable and true and Pirosh's statements in this respect should be rejected.

(d) Plaintiff contends that the avoidance or elimination on the part of Fox, through N. T. C., of competitive bidding, whenever possible, resulted in a depreciated price

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[14]Tr. 2545-2556.

[15]Tr. 2282.

for the product. This is also borne out by the record.[16] The question of competitive bidding as a compulsory mode of doing business is on debatable ground. Although the District Court in the Paramount case approved this method, the Supreme Court refused to require it, indicating that it would involve the courts in constantly supervising the economics of the industry.

It is fair to observe that the defendants herein advanced before our Court of Appeal in the Paradise case, 264 F. 2d 602, the validity of competitive bidding. In any event the statistical data discloses that in those instances wherein competitive bidding was engaged in the benefits flowing to Goldwyn were appreciable.[17]

(e) Impact is further demonstrated when, as it appears, the plaintiff was obliged to sell the product to the monopolist Fox as a matter of economic necessity. The testimony of Mr. Mulvey is clear and convincing to the effect that plaintiff's alternative was either to do business with defendant's circuit or "stay out and lose a fortune."[18]

Mulvey spent a career of approximately 35 years in the industry. His testimony simply cannot be ignored or treated cavalierly.

The late Judge Murphy was apparently impressed with the basis for Mulvey's conclusions, although the record reflects that Mulvey may not have been familiar with all of the infinite details.

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[16]Defendants' classified pictures (internally) A, B or C, for bargaining purposes with producers and thereby established a rental schedule which made true negotiation on the part of plaintiff a futile gesture. Tr. 2179-84.

[17]Pltf's Ex. 215; Tr. 2212, 2239, 3027, 3546, 5748.

[18]Tr. 4759.

> "The Court. I think his testimony to me is crystal-clear that he took into consideration, not Oakland, particularly, not the situations in such-and-such a place, but the overall picture. I consider his testimony to mean it is all-embracing, he took in all factors, including division of product, including allocation of various things—all of them were joined together and formed his concept which dictated his future activity."[19]

Further, the Court observed that ". . . he (Mulvey) cannot be expected to pinpoint all of these various situations."[20]

The plaintiff had no alternative but that of dealing with defendants largely on their own terms; this is borne out by the testimony of Mr. Mulvey.

Mochrie was obliged to accept Fox's circuit-wide terms and made clear the compulsion exercised upon R. K. O. by N. T. C. He could not obtain the requested percentage terms for the Goldwyn pictures, nor with respect to playing time would Fox give a commitment for any more than ordinary playing time,[21]

> "There is no other form the deal could take, other than flat rental; it took that form. If I had been unable to negotiate a flat rental deal, that was in my opinion better than the percentage deal which I had rejected, the only third recourse was not to sell. I don't know of any other form this deal could have taken.
>
> Mr. Pride: Or sell a competitive theatre?

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[19]Tr. 4487.
[20]Tr. 4680, et seq.
[21]Mochrie deposition, Pltf's Ex. 367, pp. 27, 30, 49, 50, 59, 61, 78.

> The Witness: Well, Mr. Pride, there were very many situations to the best of my knowledge where there were no competitive theatres.
>
> Mr. Pride: Right.
>
> The Witness: If I failed to sell the Fox circuit, there would be, in my opinion, a considerable loss of revenue to the Goldwyn pictures period."[22]

The facts demonstrate that the defendants, although ostensibly bargaining on a competitive basis, refused in the majority of the transactions and situations to purchase other than on their own terms, i.e., a flat rental basis covering the theatres in the circuit or combine as a whole.

Particularly was this so on the second-run houses. Also, they refused guaranteed playing time.

Plaintiff was required to engage R. K. O. as distribution agent on a substantial percentage of total rentals, made necessary by reason of the monopoly control by the Paramount defendants.[23]

R.K.O. admittedly was an energetic bargaining agency and had a substantial stake in the transaction.[24] Nonethe-

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[22]Mochrie deposition, Pltf's 367, p. 112.

[23]Cf. Tr. 4661; 4662. Conant, "Antitrust in the Motion Picture Industry," p. 47: "Nevertheless, control by the five major defendants over key theatres gave them power to exclude other distributors from a large share of the exhibition market. For this reason the independent producer of better quality, more costly pictures had to turn to a member of the combination for distribution in order to secure entry into enough key theatres for revenues to cover his costs."

[24]Conant, p. 80: "Only the few established independent producers with leading stars under contract, as Samuel Goldwyn, could secure distribution through RKO for 17.5 per cent of total rentals. (20% in this case) Other distributors paid 25 per cent. Even Goldwyn was required to pay 25 per cent of gross rentals for distribution of certain English films which he had acquired.

less, plaintiff was caused to earn less total rentals than would be earned in a free competitive market.

When the whole record is considered it is apparent that Goldwyn as a practical matter had to sell to the defendant NTC largely on its terms. Fox did business as a theatre circuit in totality, requiring a producer of films to do business with Fox or lose a fortune.[25] Although the veneer and plausibility of competitive bargaining was seemingly engaged in by NTC, the final decisions were made substantially on their own terms.

On the issue of restraint and impact the record demonstrates that plaintiff has discharged the burden of proof.

The issue of liability having been determined, the question of the amount and extent of the damages suffered by plaintiff shall be determined by the Court on the 15th day of May, 1961.

Findings of fact and conclusions of law may be prepared in accordance with the foregoing opinion and order.

The issue of liability having been heretofore determined by the Court, the questions surrounding the issue of damages may now be discussed and determined.

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[25]Tr. 3536-3537; 3856; 3176-3181; 3982; 3987. The scope of defendants' operations and the power it was able to exercise in its dealings with plaintiff, together with its practices as set forth in some detail, supra (allocations with "competitors"; joint ventures with Naify; secret meetings subsequent to advent of this suit, etc.), establish a mode of conduct proscribed in United States v. Griffith, et al., 334 U. S. 100, and fulfill the requirements for specific intent within the meaning of ##1 and 2 of the Sherman Act. As stated by the court at page 108, ". . . even if we assume that a specific intent to accomplish the result is absent, (defendant) is chargeable in legal contemplation with that purpose since the end result is the necessary and direct consequence of what (defendant) did."

DAMAGES

Plaintiff has not claimed that there is any one specific measure of damages applicable herein. Throughout the oral arguments and the briefs, the Court's attention has been directed to the dollar amounts of additional film rental which plaintiff would be entitled to according to different individual measures and theories of damage.

The Court has been urged to consider them all and to make a final determination based upon the application of its informed judgment to all these indicia of the amount of damages.

The mass of accounting and economic data does not permit of mathematical precision in arriving at a just and reasonable amount.[26] All of the subject matter including the expert opinion testimony, must be collated, sifted and weighed by the fact finder to the end that the Court may ultimately make a just and reasonable estimate based on relevant data as to the amount of damage, and render judgment accordingly.

Plaintiff argues: "That there is not in any recorded case under the antitrust laws a plethora of evidence as strong in depth and in extent to support a reasonable inference of damage as is contained in this record."

Although this is an ambitious statement, it may be observed that the record does demonstrate abundant evidence to afford the trier of fact a predicate upon which to measure the damage award.

> "Such damage need not be made patent item by item as on a balance sheet. The mere unlawful combina-

[26]Richfield Oil Corporation v. Karseal Corporation, 271 F. 2d 709, 715.

tion over a period of time to eliminate competition is proof of damage."[27]

The qualification and experience of plaintiff; the state of the industry both before and after the relevant period, as well as during it; the defendants' financial records; financial figures of the pictures involved, and the costs thereof; the rentals received from the Fox defendants and the Naify circuit; the rentals received from other exhibitors; the profits and losses of the pictures to the plaintiff; the profits made by the defendants; a comparison of the licensing of these pictures by competitive bidding as against negotiation; a comparison of the playing time of these pictures in Fox as against non-Fox houses; evidence of the quality or lack of quality of the pictures from the viewpoint of box-office attractiveness; the comparative position of these pictures in relation to other pictures based on national box-office gross; a comparison of competitive bidding results with negotiated results in the Fox situations on the same picture.

Before considering the opinion testimony from the experts and the extra-judicial admissions contained in the record, as well as the claimed damages reflected by the various statistical and accounting studies, it is well to have certain principles in mind emanating from the Supreme Court and the Ninth Circuit:

In Story Parchment Co. v. Paterson Co.,[28] the Court said

> "Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages

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[27]Fox West Coast Theatres v. Paradise Theatre Building Corp., (9th Cir.) 264 F. 2d 602, 608.

[28]282 U. S. 555, 563, 564.

with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise."

* * * *.

"And when, from the nature of the case, the amount of the damages cannot be estimated with certainty, or only a part of them can be so estimated, we can see no objection to placing before the jury all the facts and circumstances of the case, having any tendency to show damages, or their probable amount; so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit."

Judge Barnes, in Flintkote Company v. Lysfjord,[29] set forth the controlling rules which are applicable to the case at bar:

"We take it that the controlling rule today in seeking damages for loss of profits in antitrust cases is that the plaintiff is required to establish with reasonable probability the existence of some causal con-

[29] 246 F. 2d. 368 at 392 (9th).

> nection between defendant's wrongful act and some loss of anticipated revenue. Once that has been accomplished, the jury will be permitted to 'make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly.' Bigelow v. RKO Radio Pictures, Inc., supra, 327 U. S. at page 264.
>
> "66 S. Ct. at page 580. The cases have drawn a distinction between the quantum of proof necessary to show the fact as distinguished from the amount of damage; the burden as to the former is the more stringent one. In other words, the fact of injury must first be shown before the jury is allowed to estimate the amount of damage."[30]

In determining the fundamental tendencies from the elaborate accounting data, it will simplify our problem if we adopt a summary, the predicate for which may be beyond dispute. Such may be found in the figures of Dr. Beggs of Stanford Research Institute, a witness produced by the defendants.[31]

a. How did NTC treat the Goldwyn pictures in terms of film rental as compared to the treatment accorded the same features by other exhibitors, nationwide?

The following figures are expressed in terms of percentage of film rental paid to gross admissions—which means the number of dollars of box office receipts:

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[30]Eastman Kodak v. Southern Photo Materials Co., 273 U. S. 359; Bigelow v. RKO, 327 U. S. 251; Richfield Oil Co. v. Karseal, 271 F. 2d 709; Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., (9th), No. 15,242, Sept. 30, 1960; Cf. Continental Ore Co., et al v. Union Carbide and Carbon Corp., et al. supra.

[31]Senior Economist, Stanford Research Institute, Menlo Park, California.

Plaintiff's Picture	All non-NTC first-run selected by Beggs including Paramount case defendants	All non-NTC first-run selected by Beggs exclusive of Paramount case defendants	All non-NTC first-run selected by Beggs exclusive of Paramount case defendants and other major circuits	NTC first-run selected by Beggs
The Secret Life of Walter Mitty ...	38.2%	39.9%	41.7%	35.5%
The Bishop's Wife	37.7%	39.0%	41.5%	41.9%
The Best Years of Our Lives (G.R.)	35.3%	36.8%	37.3%	32.4%
A Song is Born ...	34.5%	35.8%	37.1%	30.7%
Enchantment	34.2%	36.7%	38.9%	30.6%

Counsel for plaintiff has provided the Court with a comprehensive compendium based upon the Beggs' work sheets and data, prefaced with the note that they have felt sensitive that the figures they themselves have advanced have been criticized. There can be no dispute as to the reliability of the Beggs' data and its applicability to damages.

Expressed in terms of dollars respecting columns 3, and 4., as above:

	Column 3	Column 4
	All non-NTC first-run selected by Beggs, exclusive of Paramount case defendants and other major circuits (Dollars of film rent per $1000 of gross admissions)	NTC first-run selected by Beggs (Dollars of film rent per $1000 of gross admissions)
The Secret Life of Walter Mitty	$417.00	$355.00
The Bishop's Wife	415.00	419.00
The Best Years of Our Lives (GR) ...	373.00	324.00
A Song is Born	371.00	307.00
Enchantment	389.00	306.00

The basic figures were used by Dr. Beggs in Ex. 197. "Relationship Between Gross Admissions Per Unit and Film Rental Per Unit in Selected Cities of the United States.[32]

The underlying figures embraced in the foregoing table are in turn reflected in defendants' charts determinative of the "line of best fit" depicting through the medium of black and red dots the relationship of film rental per unit to gross admission per unit.[33]

We have, therefore, basic figures which defendants have relied upon. These figures demonstrate that Goldwyn received far less film rental from NTC then he received from other exhibitors, particularly those whose actions were free from monopoly conditions. In terms of comparison the plaintiff received some $62,000 less from NTC for the "Secret Life of Walter Mjtty" than it actually would have received under similar conditions absent the illegal monopoly of NTC; and some $29,000 less from NTC for "Enchantment" than the plaintiff actually received from non-NTC exhibitors under similar circumstances. Again, absent monopoly factors. Plaintiff further points out that the same relative results would be reached with the other pictures depending on the difference shown in the comparison.[34]

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[32]A week of playing time is regarded as consisting of 10 units—each day of the week except Saturday and Sunday is treated as 1 unit; Saturday is treated as 2 units; Sunday is treated as 3 units. Thus, the normal week consists of 10 units. When a general holiday falls in the middle of the week, it is treated as representing 3 units. Such a week thus has a total of 12 units.

[33]Def's Ex. 197.

[34]"In view of the fact that the gross of 'The Secret Life of Walter Mitty' in NTC was $1,006,069 and of 'Enchantment' $359,825. it would follow that if the Court were to use this comparison as the sole and only measure of impact and damages upon plaintiff, plaintiff received some $62,000 less from NTC ($62 per $1000 as pointed out

It is further observed that the foregoing figures used as a predicate are not the complete measure of damages for they do not take into accounting the increase in playing time.

b. There is no dispute concerning the essential facts surrounding the following significant transactions.

In 1945, as the result of complaints by the Distribution Department of Twentieth Century-Fox concerning inadequate film rent from NTC, NTC paid additional film rental of $500,000. This payment was over-all and made to satisfy demands of the distribution department of the parent company.

Also, in 1947 NTC paid Twentieth Century-Fox an additional amount of $500,000 film rental.

The record further discloses that the payment during 1945 was allocated to individual picture film rental. Mr. Lundgren, head of the statistical department, testified that the "distribution department maintained that they were entitled to receive more money—more film rental.[35]

The main dispute centered around the fact that sufficient film rental was not paid: *"They wanted to increase the number of percentage situations; they wanted additional percentage pictures played over and above what were being negotiated for; they wanted adjustments in the flat rental prices."*[36] (This is practically the same plaint made by Goldwyn)

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above) for 'The Secret Life of Walter Mitty' than it actually received under similar conditions, absent the illegal monopoly of NTC, and some $29,000 less from NTC ($83 per $1000) for 'Enchantment' than plaintiff actually received from non-NTC situations under similar circumstances, but again absent the monopoly factor. The same relative results would be reached with the other pictures, depending on the difference shown in the comparison."

[35]Tr. 3365.

[36]Tr. 3557; Cf. Plt's Reply Br. pp. 168-170.

Defendants, although admitting the salient facts, contend that since it owned all of NTC voting stock, NTC could be required to pay whatever amount it chose as film rental and that the matter of how much or little was paid by NTC as film rental to the parent company is no evidence of a standard of conduct as to what should have been paid to an outside distributor.

The defendants' contentions are not valid and are not borne out by the record.

Lundgren testified:

> "During the years that National Theatres Corporation was a subsidiary of Twentieth Century-Fox Film Corporation, at least during the period National was operated by the Skouras brothers, there was an understanding between the distribution department and the exhibition department that to all intents and purposes there would be arms-length negotiations for film, as much as possible—especially in view of the fact that there were certain contractual obligations with individuals that depended partly upon either contract profits or other types of additional compensation."[37]

Traditionally, the bargaining between the NTC divisions and Twentieth Century-Fox was at arm's length and there was as much bargaining and haggling over the terms as there was with other distributors.[38]

In addition, Charles Skouras and other officers enjoyed manager's contracts which provided for compensation based upon the profits of their respective divisions of NTC. It is fairly inferable from the record that these gentlemen were

[37]Tr. 3362; Plt's Br. p. 152.
[38]Rhoden, Pltf's Ex. 198.

not engaged in making gifts to Twentieth Century if it would mean a reduction in their own compensation. It is further inferable from the record that these executives were not engaged in operating an eleemosynary institution.[39]

Mindful of their general pattern of conduct, one would not expect them to deal out two payments of $500,000 each without great intra-mural compulsion.

The 1945 payment of $500,000 was spread over six Twentieth Century-Fox pictures, thus increasing the film rental on these pictures to an average of 35.5 percent.

By parity, plaintiff contends that the same basic arguments therein availed of afford a predicate for an additional film rental in excess of $200,000 spread over five Goldwyn pictures.[40]

Again, although the arithmetical foundation does not have the same nicety of calculation as that contained in a balance sheet or profit and loss statement, nevertheless it does afford a trier of fact sufficient predicate upon which to base a finding within the fair intendment of the applicable authorities.

c. Further evidence of damages suffered by plaintiff may be found in the record under the general heading of competitive bidding. This form of negotiation for pictures developed at the conclusion of the Paramount case and served as a means of assuring competition in the industry. During the three years involved in the present case, competitive bidding occurred not only as to plaintiff's pictures in certain instances, but also as to many of the products of defendants and their rivals.[41]

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[39]Carter v. Twentieth Century-Fox Film Corp., supra.
[40]Plt's Br. p. 156.
[41]See Def's Ex. 215.

While variations occurred from picture to picture and from season to season, the total result of competitive bidding was to assure producers better film rentals and better play-off time.[42] Thus, despite the fact that the gross admissions per unit—a measure of box office attractiveness—during the several years in question were slightly higher (2%) for pictures sold without competitive bidding than for those sold under such procedure, the actual rental per unit for the latter pictures was higher. The percentage of rental was higher under competitive bidding and the playing time was greater.

In the 1947-48 season defendants paid almost 10% more for pictures purchased on a bid basis and allowed those pictures an average of over 3 units more of playing time. Similarly in the 1948-49 season, the average rental paid for bid pictures was two percent higher than for non-bid pictures and the average unit of playing time exceeded that for non-bid pictures by more than three units. Again in the 1949-50 season, competitive bidding and unit of playing time exceeded that for non-bid pictures. For the three seasons, the average increased rental and additional playing time enjoyed by plaintiff under competitive bid situations in negotiations with defendants resulted in 54% greater revenue for pictures leased under competitive terms than for those rented without competitive bidding.[43]

Mr. McIntyre of RKO, plaintiff's agent, testified that defendants refused to make any commitment as to playing

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[42]Tr. 4407, 4408, as supplemented by plaintiff's Exhibits 406 and 407 and analyzed in detailed appendix to plaintiff's brief dealing with individual competitive bidding situations in areas ranging from Compton, Huntington Park, Los Angeles and Inglewood to San Jose, Sacramento and San Francisco. See also, plaintiff's reply brief, opposite p. 127.

[43]Pltf's br. pp. 104-116; Tr. 5749, 5753, 5754, 5796; Beggs testimony through Exh. 215.

time for plaintiff's pictures when he negotiated with them. Contrast this with the situation arising under competition. Defendants' own witnesses conceded that in many situations, competitive bidding led to higher film rentals and more units of playing time. Nor can this be dismissed as "crisis" conduct. As stated above, defendants themselves presented arguments on behalf of competitive bidding before our Court of Appeal in the Paradise case.[44] They pointed out its advantages and its fairness to producers. The scale on which it was utilized during the years covered by this litigation establish its acceptance by the industry.[45] The thread of the arithmetic story told through this media results in the following conclusions which are inevitably drawn from the record:

1. In competitive bidding there is more playing time.
2. In situations of comparable note the rental or license fee was greater.

While defendants may challenge the specific differential between competitive and non-competitive rentals, they cannot dispute the record which establishes that plaintiff would have received substantially higher rentals for its pictures had they been negotiated on a competitive bid basis. Defendants themselves paid more for the same product when they acquired a picture on a competitive basis.[46] As previously stated, plaintiff would have received in excess of 50% additional rental during the period 1947-50 had competitive bidding been available for disposition of its products.[47]

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[44]264 F. 2d 602.

[45]See Exh. 215.

[46]Cf. Tr. 6005, 6109, 6116-18, 6369.

[47]Footnote 43, supra.

Consideration should also be given to the testimony of James Mulvey, the president of plaintiff. Mr. Mulvey spent thirty-five years in the industry in various capacities and also had approximately seven years' experience as a trained accountant. We have already alluded to the fact that Judge Murphy was seemingly impressed with his testimony.

Apart from the interest that the witness would necessarily have in the outcome of the controversy and mindful of the fact that expert opinion testimony is very often ingenious[48] and subject to the pressures of partisanship and employment, nevertheless Mr. Mulvey's testimony is persuasive—again, merely as a base upon which a fact finder could undertake to predicate a reasonable estimate.

Mr. Mulvey's testimony occupied some 700 pages of transcript. He was subjected to lengthy direct and vigorous cross-examination. He testified in finality based upon the Walsh Studies[49] that plaintiff was aggrieved and damaged in the amount of $287,675 as to the five pictures distributed.[50]

Did the plaintiff introduce sufficient relevant economic data from which a court may be able to make an estimate of what the market might have produced absent violation of the antitrust law?

The foregoing general illustrations answer this question in the affirmative. The Court is mindful, however, that the arithmetical observations and conclusions are merely pieces of the general mosaic—not controlling or conclusive as to the specific dollar claim,—and merely serving as elements upon which to predicate the ultimate finding.

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[48]Judge Murphy stated (Tr. 6478): "Dr. Beggs has done everything but the Indian Rope Trick with his figures . . ."

[49]Pltf's Exh. 401.

[50]Pltf's Exh. 385.

d. There are many other facts which are tendered as part of the general accounting picture. Plaintiff has advanced a comparison of "Hans Christian Andersen" (shown in the early '50's) with the results of the pictures released and exhibited during 1947-50.[51]

In addition, plaintiff has advanced other and varied contentions on which damages may be predicated. However, the foregoing transactions, set forth seriatim, are thoroughly grounded in the record and present relevant data upon which reliance may be placed.

In arriving at the amount of damage, it is evident that the result cannot be obtained by applying a formula that would operate with the precision that would ordinarily be encountered in a corporate balance sheet or profit and loss statement.

Realizing the difficulties attendant upon such appraisal, our Court of Appeals in Richfield Oil v. Karseal, supra, at page 714, observed:

> "We do not see much difference between the suggested formula (profits plaintiff would have realized if defendant had marketed product) as an assist in arriving at just and reasonable damages, and a chart placed on a blackboard in a personal injury case, where plaintiff's lawyer outlines his computations as to loss of earnings, pain and suffering, and the various other items of damage. The plaintiff is not required to prove with mathematical certainty the amount of its damage resulting from a defendant's violation of the antitrust laws.

Story Parchment Co. v. Paterson Parchment Co., supra, 282 U. S. at pages 562-563, 51 S. Ct. at page 250, states:

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[51] See testimony of Lundgren, pp. 5496-5498.

> '. . . It is true that there was uncertainty as to the extent of the damages, but there was none as to the fact of damage; and there is a clear distinction between the measure of proof necessary to establish the fact that petitioner had sustained some damage and the measure of proof necessary to enable the jury to fix the amount. The rule which precludes the recovery of uncertain damages applies to such as are not the certain results of the wrong, not to those damages which are definitely attributable to the wrong and only uncertain in respect of their amount . . .'
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> . . .
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> Under all the facts in the case the damages must have a reasonable and fair relationship to the type, extent and period of the restraint applied, the number of outlets affected by the restraint and the kind of product, its price and salability, the profit made on sales, and an estimate of the amount of profit lost by reason of the illegal activities of the defendant. There was here proof of such matters."

As we have it in the case at bar the matter is simplified to the extent that the same parity of reasoning may be applied as in a personal injury case. Conceivably, in the absence of specific evidence of a clear and satisfactory character such a rule or formula would resolve the matter into mere guess or speculation. However, the case at bar provides specific references as hereinabove pointed out, as a basis and criterion upon which to predicate and rationalize the quantum of damage suffered. There is no guess work or speculation involved when we have the various elements

and components as carefully and precisely set forth as hereinabove alluded to.

Under the circumstances the sum of $100,000 trebled under Section 4 of the Clayton Act[52] results in a total award of $300,000. This amount equated as to the various elements herein alluded to represents an amount based on relevant data consistent with a fair, just and equitable award. Attorney fees and costs are allowed plaintiff.

DATED: MAY 31st, 1961

/s/ GEORGE B. HARRIS
United States District Judge

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[52]"Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Opinion by Judge Hamley

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 17,725—Jan. 24, 1964

TWENTIETH CENTURY FOX FILM CORPORATION, FOX WEST COAST THEATRES CORPORATION, FOX WEST COAST AGENCY CORPORATION and NATIONAL THEATRES CORPORATION,

Defendant-Appellants,

vs.

SAMUEL GOLDWYN, FRANCIS HOWARD GOLDWYN, SAMUEL GOLDWYN, JR., JAMES A. MULVEY and BEN FISH, doing business as GOLDWYN PRODUCTIONS, a limited partnership,

Plaintiff-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Before: POPE, HAMLEY and BROWNING, Circuit Judges

HAMLEY, Circuit Judge:

This is a suit by a motion picture producer against motion picture exhibitors and their agents to recover damages for, and obtain injunctive relief from, asserted violations of sections 1 and 2 of the Sherman Act.[1] Damages were claimed in the sum of $2,250,000, trebled to $6,750,000. Jurisdiction was asserted under sections 4 and 16 of the Clayton Act.[2]

[1] 26 Stat. 209 (1890), as amended, 50 Stat. 693 (1937), 15 U. S. C. §§ 1, 2 (1958).

[2] 38 Stat. 731, 737 (1914), 15 U. S. C. §§ 15, 26 (1958).

The action was commenced on May 16, 1950, by Samuel Goldwyn Productions, Inc.[3] Nine corporations and three individuals were named defendants. Five of the corporate defendants and two of the individual defendants were granted a separate trial.[4] The third individual defendant, Charles P. Skouras, died on October 22, 1954, and the action was discontinued as to him.

The four defendants remaining in the case for this trial are the so-called "Fox defendants": Twentieth Century Fox Film Corporation (Twentieth Century Fox), National Theatres Corporation (National), Fox West Coast Theatres Corporation (Fox West Coast) and Fox West Coast Agency Corporation (Fox West Coast Agency).

Twentieth Century Fox, the parent corporation in this group,[5] is an integrated producer, distributor and exhibitor

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[3]Prior to entry of the final judgment on September 20, 1961, Samuel Goldwyn, Francis Howard Goldwyn, Samuel Goldwyn, Jr., James A. Mulvey and Ben Fish, doing business as Samuel Goldwyn Productions, a limited partnership, succeeded to the interests of Samuel Goldwyn Productions, Inc. Accordingly, on August 8, 1961, plaintiff moved for a substitution of parties plaintiff to take account of this succession of interests. Such an order was entered on October 13, 1961, nunc pro tunc as of September 20, 1961.

[4]The corporate defendants which were granted a separate trial are United California Theatres, Inc. (United California), and T. & D. Jr. Enterprises, Inc. (T. & D. Jr.) comprising the so-called "McNeil-Naify defendants," Golden State Theatre & Realty Corporation (Golden State), San Francisco Theatres, Inc., and Excelsior Amusement Co., Inc. The McNeil-Naify defendants and Golden State operated the "Naify Circuit." The individual defendants who were granted a separate trial are Michael A. Naify and R. A. McNeil (now deceased), owners and general managers of the Naify Circuit.

[5]All of the stock of Fox West Coast Agency is owned by Fox West Coast. All of the stock of Fox West Coast is owned by National. Prior to May 11, 1943, forty-two per cent of the stock of National was owned by Twentieth Century Fox. After that date, the latter company owned all of the stock of National.

of motion pictures. National, in addition to its control of Fox West Coast, operates motion picture theatres in the middle and far western states through other subsidiary operating corporations. Fox West Coast is engaged in the management and control of theatres in California, Arizona, Montana and Nevada. Fox West Coast Agency is in the business of buying and booking motion picture films for those theatres which are operated directly or indirectly by Fox West Coast.[6] Motion picture theatres operated or controlled by Twentieth Century Fox, National and Fox West Coast comprise the "Fox Circuit."

It was alleged in the complaint that, beginning in 1925 and continuing to the date the action was commenced, defendants and others acting in concert with them unlawfully entered into contracts, combinations and conspiracies to monopolize and restrain trade in the interstate licensing and exhibition of motion pictures, and that they did monopolize and restrain, and attempted to monopolize and restrain such trade. It was alleged, more particularly, that the asserted contracts, combinations and conspiracies dealt with the six kinds of undertakings set out in the margin.[7] The specific objectives of the asserted contracts, combinations and con-

[6]While the trade refers to the "buying" and "selling" of film, the transactions are actually licensing arrangements since the films are copyrighted.

[7]"a. Agreeing to acquire and maintain and acquiring and maintaining a monopolistic combine of first and subsequent run theatres for the exhibition of motion pictures;

"b. Agreeing to eliminate and eliminating competition in the purchase of film licenses;

"c. Agreeing to control and restrain, and controlling and restraining negotiations for the terms and conditions for licensing the exhibition of motion pictures;

"d. Agreeing to allocate and allocating motion picture product among themselves on a non-competitive basis;

spiracies, it was alleged, were to: (a) establish, increase, maintain and perpetuate a monopolistic buying power of motion picture theatres, (b) negotiate for the film licenses on a collective basis, and (c) depreciate film rental paid to producers.

With regard to twenty-eight motion pictures produced by the plaintiff or its predecessor in interest during the period of the asserted contracts, combinations and conspiracies, it was alleged, the violations complained of depreciated the value of the pictures, lessened the fees paid under the licenses, and substantially injured and impaired the good will attaching to the producing company and to the picture.

The answer filed by the Fox defendants consisted of a general denial as to the critical allegations of the complaint, together with eight affirmative defenses including defenses relying on the one- and three-year California statutes of limitations, laches, and the principle of *pari delicto*. Discovery and other pretrial proceedings, interspersed with long periods of inaction insofar as the record reveals, consumed the period from November, 1950 to June, 1956.

On July 12, 1956, the Fox defendants moved for partial summary judgment dismissing plaintiff's claims which had accrued prior to May 16, 1947 on the ground that such claims were barred by the three-year California statute of limitations.[8] This motion was argued before The Honor-

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"e. Agreeing to operate and maintain, and operating and maintaining, a rigid uniform and non-competitive system in the booking and playing of motion pictures; and

"f. Agreeing to establish, fix, decrease, stabilize and depreciate, and actually establishing, fixing, decreasing, stabilizing and depreciating the film rental to be paid producers for the exhibition of motion pictures."

[8]The action was commenced before the enactment of 69 Stat. 283 (1955), adding section 4B to the Clayton Act, 15 U. S. C. § 15b (1958), which new section provides, among other things, a four-year

able Edward P. Murphy, to whom the case had been assigned. On October 3, 1956, Judge Murphy entered an order granting defendants' motion for a partial summary judgment dismissing all claims which accrued proir to May 16, 1947. *Samuel Goldwyn Productions, Inc.* v. *Fox West Coast Theatres Corp.*, N. D. Cal., 146 F. Supp. 905.[9]

The case was tried before Judge Murphy, without a jury, beginning on July 10, 1957 and continuing intermittently until January 14, 1958, when both sides rested. On December 13, 1958, before the cause was argued or submitted, Judge Murphy died. On July 28, 1959, the cause was reassigned to The Honorable George B. Harris for all further proceedings. Pursuant to stipulation, the cause was submitted to Judge Harris for decision on the record before Judge Murphy. The date of final submission was April 10, 1961.

On May 4, 1961, Judge Harris filed his memorandum opinion holding the Fox defendants liable to plaintiff for the injuries caused by what the court found to be defendants' violations of the antitrust laws between May 16, 1947 and May 16, 1950. On May 31, 1961, Judge Harris filed his supplemental opinion holding that plaintiff was entitled to actual damages in the sum of $100,000, to be trebled to $300,000. Attorneys' fees in an amount not then specified were also allowed. These opinions were reported in *Samuel Goldwyn Productions, Inc.* v. *Fox West Coast Theatres*

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statute of limitations for causes of action under section 4 of the Clayton Act. Section 4B also provides that no cause of action barred under then-existing law shall be revived by the 1955 enactment. The three-year California statute of limitations relied upon by defendants in moving for partial summary judgment, is Cal. Cod. Civ. Proc. § 338(1).

[9]Plaintiff applied to this court for leave to file a petition for writ of mandamus or prohibition to review the order of October 3, 1956. On April 11, 1957, we denied the application, our order being unreported.

Corp., N. D. Cal. 184 F. Supp. 507, 513. Attorneys' fees in the amount of $100,000 were thereafter allowed plaintiff.

Findings of fact, conclusions of law and a judgment were entered on September 20, 1961. In the findings of fact the court described how Twentieth Century Fox had acquired its interest in theatres,[10] and depicted in detail the extent of the theatre holdings which evolved.[11] Other theatre groups were described.[12] The procedures were explained under which the licensing of all film used in the Fox Circuit was centralized in National's Los Angeles office.[13] Also described were the methods instituted by National under which it controlled price and playing time for films.[14]

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[10]Through its predecessors, Twentieth Century Fox began acquiring theatres in 1925. In that year it acquired approximately one-third of the common stock of West Coast Theatres, Inc. In March, 1928, it acquired all of the stock of Wesco Corporation which later became National. The latter corporation then owned the stock of various other theatre-operating companies.

[11]National had interests either directly through wholly or partially owned subsidiaries or indirectly by virtue of film buying and other arrangements, in 587 theatres which it operated at the end of 1946, and 531 theatres which it operated in September, 1950. These theatres were located in 189 communities in eighteen states. In addition, National held interests in first run theatres in New York City, Detroit and Philadelphia.

[12]Principal among these were the Naify Circuit, referred to in note 4, comprised of over one hundred theatres during the 1947 to 1950 period; United Artists Theatres of California, Inc.; Principal Theatres, Inc.; Evergreen State Amusement corporation; John Hamrick Theatres; Cascade Theatre Corporation; J. J. Parker Theatres; and the Danz Circuit.

[13]The court found that the buying of films for all theatres in the various groupings in which National had an interest was done entirely by National, except that the buying of films for the Naify Circuit was done by the Naify buying organization with the advice and active collaboration of National, a major stockholder in the Naify Circuit.

[14]In this connection the district court found (findings of fact Nos. 35 and 36):

"'35. National agreed with the different distributors on specific brackets of classification for the distributor's pictures.

In the findings of fact the ways in which National restrained trade and eliminated competition are then detailed at great length. Three principal methods by which this was accomplished are described. The first of these was through the joint operation or ownership of theatres with other exhibitors. The second method had to do with activities by National, through its subsidiaries, in excluding actual and potential competition. The third method related to the agreements entered into by the Fox Circuit with competitive exhibitors not to compete in the licensing of films, but to split or divide the product.

Following a description of these methods by which National restrained trade and eliminated competition, there are findings dealing specifically with the way in which National used its circuit buying power in the licensing of plaintiff's seven pictures which were marketed during 1947

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such as A, Double A, B, C, etc., and for each theatre in the circuit there was a price and playing time designated for each bracket. The negotiation between the National buyer and distributor's representative was merely as to what bracket the picture in question fell into. When this was negotiated out and agreed upon, the terms to be paid by National were automatically determined by the bracket into which it fell. These picture classifications were in effect during the period 1947 to 1950 and had been used at least since 1940.

"36. The policies and details of operations of each of the divisions were controlled and minutely supervised by National either directly or through the medium of National Theatres Amusement, Inc. Such supervision, control and necessity for final approval by National covered such varied matters as the making of pooling agreements by Fox West Coast for the operation of the theatres in downtown San Francisco and extension of the United West Coast-Fox West Coast-United Artists Theatres agreement to approving expenditure for a new theatre 'provided the negotiations with the landlord for the commercialization of the Strand Theatres [sic] (an old theatre which was becoming obsolete) immediately upon the opening of the new theatre are brought to a successful conclusion' and such matters as authorizing the expenditure of $1224 for a new roof on a theatre.

to 1950. These pictures, the titles of which will be abbreviated elsewhere in the opinion, were: THE SECRET LIFE OF WALTER MITTY, THE BISHOP'S WIFE, THE BEST YEARS OF OUR LIVES (regular release), A SONG IS BORN, ENCHANTMENT, ROSEANNA McCOY and MY FOOLISH HEART. The final twenty-seven paragraphs of the findings deal with the question of damages.

On the basis of the findings of fact the district court entered conclusions of law setting out twelve different ways in which defendants had violated the Sherman Act. According to these conclusions of law, the objective of the described interests, relationships, arrangements and activities was the elimination of competition in the exhibition of motion pictures. This objective was accomplished by concentrating buying power in National, eliminating competitive bidding, dividing and allocating products, granting the right of first refusal and first right to negotiate for film licensing, fixing clearance schedules, and by various other means.

Judgment was entered in accordance with the findings and conclusions and in keeping with the opinion which the court had rendered. The Fox defendants appealed and plaintiff cross appealed.[15]

On their appeals, defendants argue five points: (1) the district court erred in holding that plaintiff had been damaged by any violations of the Sherman Act; (2) no liability was proved as to Twentieth Century Fox; (3) the court erroneously applied the three-year California statute of limitations because the one-year statute should have been applied; (4) the court awarded excessive attorneys' fees; and (5) the court erroneously allowed certain items of cost.

[15] A subsequent appeal was taken by defendants from the district court order taxing costs and is also before us at this time.

On the cross appeal, plaintiff argues three points: (1) the court erred in limiting plaintiff, as to defendants Twentieth Century Fox and National, to claims arising on and after May 16, 1947; (2) the court erred in excluding from the evidence the findings of fact, conclusions of law, judgments and decrees in the *Paramount* case, and (3) the finding of fact that plaintiff's actual damages for the period from May 16, 1947 to May 16, 1950, is clearly erroneous because such damages greatly exceeded that figure.

Liability—Particular Practices, Relationships and Corporate Interests

Defendants contend that none of the practices, relationships or interests examined into during the trial involved any violation of the Sherman Act, or at least any violation which could have adversely affected plaintiff. Discussing each such practice, relationship and interest, defendants assert either that the evidence does not support the finding made, or that the facts found reveal no violation of the Sherman Act, or that plaintiff was not adversely affected.

We will discuss these practices, relationships and interests individually. In the course of doing so, we will also deal with defendants' related presentation of facts and arguments concerning the individual Goldwyn pictures marketed during 1947 to 1950, and the negotiations for their licensing.

Circuit key and lump sum deals.[16] The district court found that circuit key and lump sum deals were made by the

[16] A "circuit key deal" is one under which the exhibitor agrees to pay as film rental a percentage of the film rental the picture earned nationwide, within an agreed period of time, *i.e.*, if he agreed to pay seven per cent this was calculated by treating all other domestic film rental paid as ninety-three per cent. A "lump sum deal" is one involving a single dollar amount for licensing to a theatre circuit without agreement as to the film rental to be paid by any single or group of theatres.

central buying office of National for the entire circuit with various distributions. On some circuit key deals or lump sum deals, the court found, allocations were made from National's central buying office in Los Angeles of the amounts to be paid by the various divisions of National. Defendants argue that these practices could have had no adverse effect upon plaintiff.

First, they assert, there is no finding that such a deal was made for any of the Goldwyn pictures. While this is true with regard to circuit key deals, the district court did find that RKO, which was plaintiff's distributor, requested but could not obtain percentage terms for the Goldwyn pictures, being compelled to accept flat rental terms. Moreover, as will later appear, Goldwyn pictures could be and were, adversely affected by circuit key and lump sum deals which, according to the findings, were entered into with the distributors of other pictures.

Defendants further argue that, to the extent that any such deals may violate the antitrust laws, it is because of their impact on other exhibitors, not because they are prejudicial to the distributor who agreed to them. Our attention is also called to language in *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 155, where such arrangements were referred to as "formula deals," and where the Supreme Court said:

> "It is hardly necessary to add that distributors who join in such arrangements by exhibitors are active participants in effectuating a restraint of trade and a monopolistic practice."

In *Paramount*, the Supreme Court held that such deals, made for an entire circuit, constitute restraint of trade in two respects. They eliminate the possibility of bidding for

films theatre by theatre, and they represent a pooling of the purchasing power of an entire circuit in bidding for films, thereby constituting a misuse of monopoly power. This misuse, the court indicated, arises from the fact that a circuit having a complete monopoly of theatres in any one town,[17] can use a circuit key deal or lump sum deal to acquire exclusive privileges in a city where it has competitors.[18]

The direct adverse impact of such deals is upon non-circuit exhibitors, since they are placed at a disadvantage in bargaining for pictures. A producer who distributes his films pursuant to such arrangements may actually benefit therefrom, if the terms are sufficiently favorable.

But much of plaintiff's case is based upon the asserted monopoly power wielded by defendants, and the alleged ways in which it was exerted to plaintiff's disadvantage. There are numerous findings of fact sustaining plaintiff in both of these respects. The findings that National entered into circuit key deals and lump sum deals are relevant to this aspect of the case. They indicate one way in which National was able to enlarge and solidify its monopoly beyond the bounds of actual ownership.[19]

They also provide one explanation of why plaintiff had difficulty in licensing MY FOOLISH HEART and ROSE-

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[17]Such a town is known in the trade as a "closed" town. National theatres were located in approximately 189 communities in eighteen states. Approximately sixty of these communities were "closed" towns.

[18]In *Paramount*, the court referred to *United States* v. *Griffith*, 334 U. S. 100, 107-108, and *Schine Chain Theatres, Inc.* v. *United States*, 334 U. S. 110, 115-116, for a further explanation of this view.

[19]As the Supreme Court said in *United States* v. *Griffith*, 334 U. S. 100, 108:

> "When the buying power of the entire circuit is used to negotiate films for his competitive as well as his closed towns, he is using monopoly power to expand his empire."

ANNA McCOY in the Fox Circuit,[20] and why plaintiff was denied the opportunity to deal with National's competitors in "open" towns if it expected to sell to National in "closed" towns.[21] Lastly, it reveals a practice whereby National could obtain more favorable film rental terms than might otherwise have been possible.

For the reasons stated, we are of the view that National's participation in circuit key deals and lump sum deals, while perhaps not giving rise to direct and independent items of damage, tends to support the charge that monopoly power was misused. Such participation, therefore, was one of the underlying causes of any damage sustained by plaintiff by reason of defendants' use of their monopoly power in the field of motion picture exhibition.

Classification of pictures. The district court found that National agreed with distributors on "brackets" or "classifications" of pictures, specifying for the pictures in each

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[20] James A. Mulvey, President of Samuel Goldwyn Productions, Inc., testified:

> ". . . in the instance of MY FOOLISH HEART and ROSEANNA McCOY, we had offered the picture to the opposition to Fox, particularly since we couldn't sell the Fox Circuit, and we had difficulties in selling those pictures to the Fox opposition because, as I believed then and now, of arrangements as between Fox and the independent, or the influence of Fox with the independent, and we were never able to sell that picture back to Fox in many of those situations. . . ."

[21] Peter Lundgren, film buyer and head of the film statistical department of Fox West Coast, discussing the negotiations for the licensing of WALTER MITTY, testified:

> "Q. In connection with that negotiation did you offer to negotiate your closed towns separately?
>
> A. No, sir.
>
> Q. From your open towns?
>
> A. No, sir.
>
> Q. They were negotiated together?
>
> A. They were part of the complete negotiation; we never separated one from the other."

bracket the terms for each theatre and thereby confining negotiations to a determination of the bracket in which a picture was to be placed. The court found that when this was agreed upon, the terms to be paid by National were automatically determined by the bracket into which the picture fell.

Defendants argue that this practice could have had no adverse effect upon plaintiff. They contend that this was only a mechanical means of simplifying deals for run-of-the-mill "program" pictures. If a distributor wanted to negotiate this way, defendants contend, this was his privilege, and if he did he was in no position to complain. In any event, defendants assert, this system was not used in licensing any of the Goldwyn pictures.[22]

We have not discovered, in the voluminous briefs, any response by plaintiff to this argument. The utilization of such a classification system could operate to narrow the area for negotiation. It obviates theatre-by-theatre consideration in negotiating for the price of individual pictures, leaving only the question of the proper price classification for agreement. But this would be true only if the system were imposed on the opposite negotiating party.

Here the testimony indicates that the classifications were arrived at by agreement between National and the distributors, and only for convenience. Thus, entirely apart from the question of whether Goldwyn Pictures were negotiated on such a basis, we cannot perceive how this particular practice could have had a direct or indirect impact upon plaintiff. We need not decide whether such a system could be so

[22]This statement is borne out by the record. Lundgren testified that National's price classification brackets were not used in connection with the negotiations for the licensing of Goldwyn pictures. The prices on the Goldwyn pictures, Lundgren stated, were higher than those listed in the classification brackets, and were negotiated "upon the reviewed upward deal on SPANISH MAIN."

employed as to constitute a violation of the Sherman Act—it was not as to this plaintiff.

Runs and clearances.[23] Twelve paragraphs of the findings of fact are devoted to runs and clearances. The district court found that producers of motion pictures when attempting to bargain with the Fox Circuit have been met with a fixed scale of runs and clearances set by Fox West Coast to which scales they have been obliged to conform.

Defendants argue that the implicit finding that the Fox Circuit set a fixed scale of runs and clearances binding upon plaintiff is clearly erroneous, since this scale was set by plaintiff's distributing agent, RKO; that there is no evidence to indicate that plaintiff was adversely affected by any scale of runs and clearances; and that runs and clearances are an economic necessity to which no illegality attaches.

Defendants call attention to evidence indicating that plaintiff accepted the system of runs, clearances and availabilities which its distributor, RKO, was using. But the evidence, both written and oral, is in conflict as to whether the system was evolved and controlled by RKO, or by National. There was considerable evidence tending to show that National used its market power to promulgate and maintain a uniform system of runs and clearances, particularly in the large metropolitan areas. On the entire record

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[23] A "run" is the period of time during which a motion picture is licensed to be exhibited at a particular theatre. A "first run" usually produces substantially greater box office receipts and film rentals than all of the "sub-runs" put together. A "clearance" is the period of time agreed upon between the exhibitor licensing a prior run and the distributor of that picture as to the amount of time which must elapse before a picture, being run in one area, may be again run by another exhibitor in that area. It constitutes a contrac right. The "availability" of a picture is the first day upon which an exhibitor may commence the exhibition of a picture under his licensing arrangement with the distributor.

we are not left with a definite and firm conviction that the district court committed a mistake in entering the challenged findings as to runs and clearances. We therefore hold that these findings are not clearly erroneous.

In *Chorak* v. *RKO Radio Pictures, Inc.*, 9 Cir., 196 F. 2d 225, 228, we held, in effect, that while runs and clearances are not illegal *per se*, they are illegal if unreasonable and if imposed as a result of concerted action. We there called attention to suggested criteria for determining the reasonableness of clearances, as referred to in *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 145-146, and *Schine Chain Theatres, Inc.* v. *United States*, 334 U. S. 110, 121. These criteria call for consideration of such factors as admission prices, character and location of the affected theatres, theatre operating policies, rental terms and license fees, extent of competition, and affiliations.

In *Paramount*, the Supreme Court pointed out that the clearances which were in vogue had acquired a fixed and uniform character and were made applicable to situations "without regard to the special circumstances which are necessary to sustain them as reasonable restraints of trade." Under the district court findings in the *Goldwyn* case, this same situation was shown to exist, for the court found, on sufficient evidence, that producers of motion pictures when attempting to bargain with the Fox Circuit have been met with a "fixed scale" of clearances and runs.[24]

It is this inflexibility, plus imposition by concerted action of the defendants, which gives the district court findings on runs and clearances relevancy in this case. In *Paramount*, the thrust of such action was by distributors against exhibi-

[24]While plaintiff is not specifically named in this group of findings, it is a producer and so is included among those who were confronted with this fixed scale.

tors. Here, the thrust of such practice was by a combine of exhibitors, acting in concert with a producer, against independent exhibitors. The result was to weaken the competitive theatre-exhibiting market which plaintiff needed in order to bargain effectively with the Fox Circuit.

While there is no explicit finding to this effect, we believe it is implicit when all of the findings are considered together. The findings as to runs and clearances are therefore relevant to the over-all inquiry which was before the court, and tend to show that plaintiff was damaged by antitrust activity on the part of defendants.

Circuit buying power. The district court found that: film buying for the entire Fox Circuit was centralized in Los Angeles; Edwin F. Zabel, at various times, negotiated for film for all the divisions of National, and made deals for the entire circuit; the Goldwyn and Metro pictures were bought by Zabel for the circuit; RKO was obliged to accept National's circuit-wide terms; and Fox did business as a theatre circuit in totality, ". . . requiring a producer of films to do business with Fox or lose a fortune."

The existence and exercise of this circuit buying power, the district court found, was reflected in the terms which were imposed upon plaintiff and its distributor, RKO. RKO, the court found, could not obtain the terms and conditions from National it requested and received from other exhibitors for the Goldwyn pictures. Among the terms thus denied to RKO on the Goldwyn pictures, were percentage terms, as distinguished from flat rental.

As a result of this and other practices, the court found, plaintiff was caused to earn less total rentals than would have been earned in a free competitive market. In the same vein the court found that these and other acts of the defendants had an injurious impact upon plaintiff's motion pic-

tures ". . . in that they depreciated the film rentals that would otherwise have been realized."

Defendants contend that most of the findings dealing with circuit buying power are clearly erroneous. They also argue that except to the extent that they deal specifically with transactions between defendants and plaintiff or its distributor, RKO, these findings are irrelevant. Defendants also ask us to differentiate between a mere failure of buyer and seller to agree on terms, and the exertion of an exhibitor's "buying power" to force distributors to deal. In addition, defendants contend that no venal inference arises from the mere size of National, taking the position that size alone without reference to a defined, relevant market is entirely meaningless.[25]

While the testimony is in dispute concerning the practice of circuit buying, there is ample evidence to support the district court's findings that Edwin F. Zabel, representing National, bought pictures, including plaintiff's, for the entire Fox Circuit. Not all National theatres, however, were included in each transaction, as special circumstances resulted in the exclusion of some National theatres in most cases. For example, in San Francisco, Los Angeles, Denver and Kansas City where both National and RKO had one or more first-run theatres, RKO, as distributor for plaintiff, would usually give the first run of plaintiff's pictures to its own first-run house.[26]

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[25]Defendants also argue that the finding that film buying was centralized in Los Angeles is a "frivolity" which should be brushed aside, citing *G & P Amusement Co.* v. *Regent Theater Co.*, N. D. Ohio, 107 F. Supp. 453, *aff'd per curiam*, 6 Cir., 216 F. 2d 749. In our view this finding was designed only to round out the district court's description of defendant's circuit buying practices and was not intended to have independent significance.

[26]National had first-run theatres in nineteen cities having a population of over one hundred thousand. In six of those nineteen cities, plaintiff's pictures were not offered to National because RKO also had a first-run house, or for other reasons.

But, despite such exceptions, the fact remains that, on the whole, plaintiff sold pictures to National for exhibition in its large circuit, or it did not sell to any National theatres. And when Zabel bought for the "circuit" that included not only theatres owned and operated by National, but also numerous theatres which National controlled or influenced.

Contrary to defendant's contention, there was evidence from which it could be inferred that National used its position in closed towns to exert pressure on distributors. At least two witnesses testified, in effect, that it was not possible to negotiate for National's closed towns alone.[27] Where such circumstances exist it may reasonably be inferred that the monopoly power arising from control of closed towns is being used to exact favorable terms in open towns.[28]

There was also evidentiary support for the findings concerning percentage terms and flat rentals. According to this evidence, plaintiff was unable to get terms based on a per-

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[27] See Lundgren's testimony, quoted in note 21. Robert Mochrie, employed in plaintiff's distribution department, testified that Zabel never offered to license theatres in closed towns on a separate and distinct basis from those theatres in which the Fox Circuit had competition.

[28] As the Supreme Court said in *United States* v. *Griffith*, 334 U. S. 100, 107-108:

> "A man with a monopoly of theatres in any one town commands the entrance for all films into that area. If he uses that strategic position to acquire exclusive privileges in a city where he has competitors, he is employing his monopoly power as a trade weapon against his competitors. . . . Though he makes no threat to withhold the business of his closed or monopoly towns unless the distributors give him the exclusive film rights in the towns where he has competitors, the effect is likely to be the same where the two are joined. When the buying power of the entire circuit is used to negotiate films for his competitive as well as his closed towns, he is using monopoly power to expand his empire. And even if we assume that a specific intent to accomplish that result is absent, he is chargeable in a legal contemplation with that purpose since the end result is the necessary and direct consequence of what he did. . . ."

centage of gross admissions except as to what National designated as "percentage theatres." As to the remaining National theatres, only flat rentals, fixed regardless of performance, were available to plaintiff. But National's version of percentage terms, involving a so-called "sliding scale" was itself unfair to producers, according to evidence which the district court was entitled to believe.[29]

With regard to almost every other facet of National's buying practice now under discussion the oral testimony is in dispute and the written evidence is inconclusive. In these circumstances we are unable to hold that the findings entered, as reviewed above, are clearly erroneous.

Defendants extensively review the evidence pertaining to the licensing of each of plaintiff's pictures marketed in 1947 to 1950 period, and conclude therefrom that whether or not there were illegalities which might be complained of in a government case or by other exhibitors, none were practiced upon plaintiff in connection with these seven pictures. They also argue that, in any event, the district court should have made findings with respect to the treatment plaintiff received in the negotiations pertaining to each of these pictures.

The evidence was by no means undisputed concerning the negotiations for the licensing of these pictures. But apart from this, the conversational or written give-and-

[29]The "sliding scale" involved a calculation of theatre expenses and their allocation to each National theatre according to an arbitrary formula. These expenses were supposed to be actual, but there was testimony that they were not. Included among them were sums paid pursuant to joint ownership or operating agreements, circuit administrative expenses, federal excise taxes, and National expenses of defending antitrust suits. Both RKO and National's parent corporation, Twentieth Century Fox, protested "expenses" charged against revenue in computing rentals by the sliding-scale method. Goldwyn asked for an audit of theatre expenses with respect to BEST YEARS OF OUR LIVES, but was refused.

take which comprised the surface negotiations is not necessarily a reliable indication of the real forces at work, or so the district court could find. If National held an overpowering bargaining position by reason of its intercorporate relationships and alliances, to be discussed below, acquiescence by plaintiff or its distributor, RKO, in licensing terms does not manifest fair bargaining in a climate of free competition. If, as the evidence tends to show, National exerted a similar power in connection with its dealings with other producers except Twentieth Century Fox, and with other distributors, the fact that plaintiff fared as well, rental-wise, proves little.

Defendants, on the basis of their review of the individual transactions, call attention to the fact that no representative of RKO has ever said that plaintiff was coerced or imposed upon or subjected to any improper pressure in any dealings with National. They point out that RKO, with a twenty per cent interest in the rental of plaintiff's films has never asserted any claim that the rentals paid by National were unfair, discriminatory or inadequate. They note that plaintiff itself, before this litigation, had never asserted that the film rentals paid by National for WALTER MITTY and BISHOP'S WIFE were inadequate, discriminatory or in any way unsatisfactory.

There are, of course, factors to be taken into consideration in making the basic findings on this branch of the case, and in testing, on review, the evidentiary support for such findings. But, although persuasive, they are not conclusive. The business relationship between RKO and National during the critical period, and since, may well have been such as to preclude, from a practical standpoint, any indication of dissatisfaction by RKO. Likewise, the very circumstances which, as the district court found, forced plaintiff to deal

with National largely on the latter's terms, may have restrained plaintiff from making an issue of the film rentals for WALTER MITTY and BISHOP'S WIFE prior to this litigation.

Perhaps the reason why findings were not made as to the negotiations of each picture is because the district court perceived that it was more important to examine the underlying considerations which governed the negotiations than to report what offers and counter offers passed between the parties. The findings which were entered, dealing generally and specifically with the relevant practices and relationships which necessarily set the course for the negotiations, were thorough and complete. If, as we hold, these general findings are not clearly erroneous, the lack of detailed findings concerning the negotiations for each picture does not undermine the integrity of the judgment.

We conclude that the findings of fact as to defendants' circuit buying power, and how it was exercised, are sufficient, and are supported by the evidence. Taken in conjunction with all of the other findings of fact, they tend to support the conclusions reached concerning defendants' antitrust activities with regard to plaintiff during the period in question.

Allocated or split product. The district court made findings to the effect that National and competing exhibitors entered into arrangements as to the licensing of pictures whereby they "allocated product" or "split product" by agreeing as to what picture each would license.[30]

Defendants concede that "there were certain arrangements relating to the negotiations for pictures." But these, defendants assert, were not designed nor did they operate

[30]Among these findings were Nos. 54, 77, 101, 155, 166 and 167.

as anti-competitive restraints, being actually designed for the benefit of exhibitors and distributors. The objective, we are told, was to give exhibitors some assurance of a regular supply of product and to give distributors some assurance that outlets would be available to them. No such arrangements were made, defendants contend, unless the distributor or distributors who were involved were parties to it. In any event, defendants urge, no such arrangements had any effect on the licensing of the Goldwyn pictures and no theory of damages was related to these claimed arrangements.

There was no evidence to the effect that all distributors, including RKO which represented plaintiff, had their regular customers and, to serve their own interests, gave such customers preference in the initial negotiations for their pictures. But the agreements referred to in the findings of fact, were, for the most part, arrangements between exhibitors, under which a given exhibitor was given the first opportunity to negotiate for a picture or pictures. There were, however, no agreements that if the first negotiation failed the other exhibitor or exhibitors were foreclosed from negotiating for the picture. Nor were there any agreements as to prices to be offered or paid, although sometimes the allocation arrangement resulted in the withholding of a bid or the tendering of a fictitious bid by an exhibitor who, under the arrangement with another exhibitor, was not to get that particular picture.

It is also true that distributors usually learned, from one source or another, of the various arrangements entered into between exhibitors for the allocation of product. With knowledge of such arrangements they nevertheless often entered into licensing agreements with exhibitors who were parties to such arrangements. But there was also evidence to indicate that distributors usually were not informed of

these arrangements by the exhibitors who were parties thereto, and that the distributors were not themselves parties to the allocation arrangements as such.

For the purposes of this case, we may assume that the following excerpt from the unreported opinion of Judge Palmieri in *United States* v. *Loew's*, 1962 CCH Trade Cases, par. 70,347, called to our attention and relied upon by defendants is a correct statement of the law:

> "Concededly, any arrangement whereby exhibitors agree with each other that they will not compete in the buying of the product cannot be countenanced; although it is equally clear that splits of product with the consent of both distributors and exhibitors are proper."

As indicated above, the evidence in this record indicates that there were many splits of product to which the distributor, and particularly RKO on behalf of plaintiff, had not consented in advance, but which were the result of arrangements between competing exhibitors. The action of a distributor in licensing films to an exhibitor with knowledge, usually from other sources, of the arrangement between exhibitors under which the particular film was allocated to that particular exhibitor, may or may not indicate consent to such an arrangement, depending upon the circumstances of the case.

Where, as here, the exhibitor has a dominating bargaining power by reason of its corporate structure and business alliances, such acquiescence, in this case by RKO for plaintiff, is likely to manifest surrender in the face of economic pressure. We are unable to say, on this record, that the district court erred in viewing, in this light, the allocation arrangements affecting plaintiff between the Fox

Circuit and competing or allied exhibitors which were in effect during the period in question.

At least six of the sixteen specific instances of product arrangements and alliances referred to in the findings of fact involved only years subsequent to the 1947 to 1950 period here in question. As to some of the other specific instances the evidence does not clearly establish that the critical period was involved. As to most of the specific instances, only one or two of the seven pictures in question could have been affected.[31]

While these circumstances tend to minimize the adverse impact which this practice could have had upon plaintiff, insofar as recovery of damages in this case is concerned, they do not completely negative such an impact. As in the case of other practices which have been or will be discussed, it was not possible to determine, in dollars, the damages attributable to the practice of allocating and splitting product, and the district court did not attempt to do so. Nevertheless, if the findings that this practice occurred are sustainable, and we hold that they are, and if the conclusion that the practice was illegal under the circumstances is correct, and we hold that it is, such findings and conclusion have relevance as tending to support the holding on liability and the fact, if not the amount, of damages.

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[31] Defendants urge that the only Goldwyn pictures which could possibly have been affected by the practice under discussion are the last two which were brought to market during the 1947 to 1950 period. They point out that these pictures were not offered to National but were "sold away," reasoning therefrom that the practice could have had no adverse effect upon plaintiff. But the application of the "split" system to these two pictures tended to depress the price National was willing to offer. See *Royster Drive-In Theatres, Inc.* v. *American Broadcasting—Paramount Theatres, Inc.*, 2 Cir., 268 F. 2d 246, 250. Thus it was at least a contributing factor in requiring RKO, distributing for plaintiff, to look elsewhere for purchasers, to plaintiff's disadvantage as the court found.

Competitive bidding. Under a system of competitive bidding, as applied to the motion picture industry, a distributor who has a picture available sends to competing exhibitors an invitation to bid on the picture. If they respond the distributor, in theory, is to accept the best bid. In practice the distributor sometimes rejected all.

The practice of competitive bidding is closely related to that of allocating and splitting product. Where the latter practice is followed, there is either no competitive bidding or it is subject to being circumvented by fake bidding or abstention of bidders.

The district court found that: the competition engendered by honest competitive bidding resulted in the payment of higher film rentals, and increased playing time, as compared to transactions not involving competitive bidding; competitive bidding for pictures developed at the conclusion of the *Paramount* case and served as a means of assuring some measure of competition in the industry; during the three years involved in the present case, competitive bidding occurred not only as to plaintiff's pictures in certain instances, but also as to many of the products of defendants and their rivals; National, in concert with other exhibitors, however, restrained and eliminated competition with respect to plaintiff's pictures by agreements to eliminate competitive bidding.

Defendants call attention to difficulties and defects in any system of competitive bidding for motion pictures. They cite decisions in which the system has been criticized, including the *Paramount* case, where a provision of the decree enforcing bidding was disapproved.[32] They call

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[32]In Paramount, after pointing out, at 334 U. S. 162-163, some of the practical problems involved in applying competitive bidding to the licensing of films, the court said, at 164:

> "The system uproots business arrangements and established relationships with no apparent overall benefit to the

attention to evidence in the record indicating that distributors, including RKO, do not like competitive bidding, and that plaintiff never initiated competitive bidding but was content to follow RKO's policy which was not favorable to competitive bidding.

Plaintiff, however, does not contend that competitive bidding is an ideal method of film licensing. It does not appear to rely, in this court, upon the trial court's finding that National agreed with other exhibitors to eliminate competitive bidding, and that this restrained and eliminated competition.[33] Plaintiff finds significance in the competitive bidding evidence in this case only as it assertedly provides a way of measuring plaintiff's damages resulting from other practices followed by defendants.

There is, indeed, evidence to indicate that in those instances where National practiced competitive bidding, it paid more for films than when it negotiated for them. In this respect, the evidence as to competitive bidding has probative value here.

Relationship to Naify operations. As explained in note 4, the Naify Circuit was comprised of three corporations, *i.e.*, United California, T. & D. Jr., and Golden State.

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small independent exhibitor. If each feature must go to the highest responsible bidder, those with the greatest purchasing power would seem to be in a favored position. Those with the longest purse—the exhibitor-defendants and the large circuits—would seem to stand in a preferred position. If the fact they were enabled through the competitive bidding system to take the cream of the business, eliminate the smaller independents, and thus increase their own strategic hold on the industry, they would have the cloak of the court's decree around them for protection. Hence the natural advantage which the larger and financially stronger exhibitors would seem to have in the bidding gives us pause."

[33]Defendants, on the other hand, do not appear to challenge this finding of fact.

National was a stockholder in both Golden State and T. & D. Jr.[84] The Naify Circuit owned or operated over one hundred theatres in California and Nevada.

The district court found that the Naify Circuit used its circuit-buying powers to establish a preferential system of runs, clearances and availabilities on behalf of its forty theatres in San Francisco and the East Bay area, based on admission prices. The district court also found that the Naify Circuit did not license pictures on a theatre-by-theatre basis, but on a circuit basis; on such circuit deals, the Naify Circuit combined closed towns with open towns; and that the Naify Circuit gave Twentieth Century Fox preferential treatment in the booking of pictures. It was found that agreements existed between the Naify Circuit and the Fox Circuit, relating to the maintenance of non-competitive theatre holdings and to the negotiation and licensing of motion pictures.

The court also made the following findings of fact concerning the Naify Circuit:

> "92. From the time the pooling agreements were entered into between the Naify Circuit and the Fox Circuit, the Fox Circuit actively assisted and aided the Naify Circuit in the negotiation and licensing of motion pictures.
>
> "93. In 1947 and 1948 conferences were held between the Naify Circuit and the Fox Circuit with respect to the development of a sliding scale based on theatre expenses for use by the Naify Circuit.

[84] National owned 24.6% of the stock of Golden State and had an ultimate interest of 26.62% in the corporation during the years here in question. National owned 26.69% of the stock of T. & D. Jr. and held an ultimate interest of 31.77%.

"94. Joseph Schenck became an intermediary in film licensing negotiations between the Naify Circuit and Loew's, Inc."

With regard to these quoted findings, defendants first argue that, as the owner of almost a third interest in the Naify Theatres, National had a natural interest in its investment. They point out, however, that National and Naify had no common directors, officers or agents,[35] and assert that National took no part in the Naify operation or its management. Moreover, defendants insist, National had no part in fixing the terms on which Naify licensed pictures, thus in effect challenging certain of the findings referred to above.

There is substantial evidence to support finding of fact No. 93, quoted above. Copies of correspondence were introduced showing that, in 1948 and 1949 there were conferences and exchanges of data pertinent to a sliding scale of expense formula.[36] With regard to findings Nos. 92 and 94, however, plaintiff calls attention to no supporting evidence. Defendants have called attention to what they represent to be the only evidence bearing thereon. All of it, except one item, relates to years other than 1947 to 1950, and the one item which relates to the critical years actually has to do with finding No. 93.

The corporate interrelationship between National and the Naify Circuit may of course have antitrust significance apart from particular operating practices of the kind under

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[35]National did have two representatives on the Naify boards of directors.

[36]We refer to plaintiff's exhibits Nos. 110 and 115, and associated testimony. Numerous other exhibits bearing upon such contacts between National and the Naify Circuit dealt with years not involved in this suit.

discussion. This is a matter to be discussed below. Confining ourselves at this point to the three findings of fact which defendants challenge, we hold that No. 93 is supported by the evidence and has relevance to the question of antitrust violations, and that Nos. 92 and 94 are clearly erroneous, insofar as the years 1947 to 1950 are concerned.

National's corporate structure and theatre interests. The district court found that in addition to the theatres it owned, National controlled over 150 theatres through various forms of joint operating agreements, joint corporations, pools, and joint ventures. The two largest groups of theatres in which National or a subsidiary was found to hold such a joint interest were the fifty-eight houses operated by United West Coast Theatres Corporation (United West Coast) and the Principal Theatres, Inc. theatres, comprising fourteen houses.

The court found that the means utilized in acquiring such control involved the making of commercial alliances with independent exhibitors in National territory ". . . who, but for the alliances would have been formidable competitors in the market for plaintiff's pictures." The court found that the buying of films for all theatres in the various pools in which National had an interest was done entirely by National. An exception to this practice was made in the case of the Naify Circuit, the court found, as the buying of films for the Naify Circuit was done by that circuit, but with the advice and active collaboration of National.[37]

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[37]The foregoing findings are contained in finding of fact No. 37. In findings Nos. 38 to 41, the court listed the theatres in which National or a subsidiary, and one or another of many named competitive exhibitors, held joint ownership or operating rights during 1947 to 1950. As to most of these theatres the percentage interest of National or its subsidiary was indicated, the percentage ranging from 25.5% to 90.83%.

The district court found that a basic agreement, first entered into by United Artists and Fox West Coast on September 1, 1933, but further extended to at least December 31, 1959, provided that ten United Artists theatres and approximately twenty-three Fox West Coast Theatres were leased or subleased to United West Coast. United West Coast was owned seventy per cent by Fox West Coast and thirty per cent by United Artists.

The court found that, under this agreement, certain other theatres were to be operated by Fox West Coast, the profits and losses to be divided between the parties on the seventy per cent-thirty per cent ratio. The court found that, as a result of the pooling of interests of Fox West Coast and United Artists in United West Coast, ". . . competition both generally and specifically with respect to the licensing of plaintiff's pictures for exhibition, was restrained and eliminated."[38]

The court found that, after the formulation of the United West Coast pool under the basic agreement, twenty-three theatres were acquired by Fox West Coast or United Artists, or together, but were not operated by Fox West Coast and United Artists in competition with one another. Instead, the court found, these theatres were added to the United West Coast pooled holdings pursuant to the "no separate acquisition" provision of the basic agreement.

According to the district court, the United West Coast pool was not terminated until February 1, 1950. During

[38]The court also found that competition was further restrained and eliminated by the provision of the basic agreement between United Artists and Fox West Coast that neither party would construct or operate theatres in various sections of California except under stipulated conditions. These conditions were that such newly-constructed theatres would be placed into the pool, and that the profits from the operation of such theatres would be divided between the parties.

the time of its existence, the court found, this pool was a restraint upon and worked an elimination of competition between Fox West Coast and United Artists and other exhibitors. The court found that during the period 1947 through 1949, a total of $31,125,433.15 in admissions revenue, or 21.67 per cent of the total Fox West Coast admissions revenue was derived from the operation of the United West Coast Theatres pool. The court expressly found that this pool operated to restrain and eliminate competition among these parties for the licensing of plaintiff's pictures.

Findings of the same general character, although not as detailed, were made with regard to the relationship between Fox West Coast, United Artists Theatres, and the Naify Circuit, and Fox West Coast and Principal Theatres, Inc.[39]

The district court concluded that defendants' joint operating arrangements with the United Artists Theatre Circuit, their interests in the Naify Circuit, their representation on its board of directors, the elimination of competition between the Naify Circuit and Fox West Coast, and defendants' joint operating arrangements with competitive exhibitors in the Principal Theatres and Hamrick pools, violated section 1 of the Sherman Act. The court further concluded that the combination of the United Artists pool, the Principal pool, the Hamrick pool, the Naify Circuit, and all the other joint operating arrangements and joint interests with competitive exhibitors, taken as a whole, violated sections 1 and 2 of the Sherman Act.

[39]Since January 1, 1937, Fox West Coast has owned fifty-one per cent of the outstanding shares of Principal Theatres, Inc., which operated twenty-five theatres, seven of which were located in downtown Los Angeles. During the period 1947 through 1949, the court found, a total of $13,766,768.12 in admissions revenue, or 9.58% of the total Fox West Coast admission revenue was derived by Fox West Coast from the operation of the Principal Theatres pool.

With regard to these findings, defendants first object to the use of the term "pools" in referring to jointly-owned corporations. They point out that, as indicated in the *Paramount* case, 334 U. S. 131, 149, pooling agreements are those between exhibitors by which their theatres, normally competitive, are operated as a unit, or managed by a joint committee or by one of the exhibitors, the profits from all theatres in the pool being shared according to prearranged percentages. In *Paramount*, the court distinguished between "pooling agreements," as so defined, and arrangements between exhibitors for joint ownership of theatres.

Defendants concede that, prior to June 30, 1947, National had been a party to certain pooling arrangements. They assert, however, that all such pools had been terminated as of that date and therefore could have had no effect upon the Goldwyn pictures here involved.

Defendants are correct in drawing the indicated distinction between pooling agreements and other business arrangements involving joint ownership of theatres. However, defendants have not been prejudiced by any characterization of joint ownership agreements as "pooling" arrangements.

Although all "pools" in the *Paramount* sense may have been terminated prior to June 20, 1947, the record discloses that joint ownership arrangements of the kind dealt with in the *Paramount* case, continued during the damage period. The basic agreement which Fox West Coast and United Artists entered into on September 1, 1933, in which joint ownership arrangements were provided for, was last extended by written agreement dated August 4, 1944. The basic agreement was thereby extended to December 31, 1959. It was actually terminated on December 21, 1949, in fulfillment of a provision of the *Paramount* decree.

National also held partial or controlling interests in other exhibiting corporations outside of the Twentieth Century Fox hierarchy. The two prime examples of this are Principal Theatres, Inc., in which National held a controlling interest, and the Naify Circuit, in which National held a substantial although minority interest.[40] As before indicated, the district court found and concluded that these joint-ownership arrangements violated the Sherman Act.

Defendants argue that National's joint ownerships in such corporations during the years in question were not *per se* illegal. We need not decide whether this is true, because the district court did not hold that such joint ownerships were illegal *per se* and the plaintiff does not here argue that they were.

What the district court held, and what plaintiff here asserts, is that these joint ownerships were illegal under the particular facts of this case. Defendants challenge this holding and make reference to facts of record which, in their view, establish the innocuous character of these joint ownerships, at least insofar as plaintiff is concerned.

Our examination of the evidence leads us to conclude that the district court was warranted in concluding that the several joint ownership arrangements involved violations of the Sherman Act. The basis for reaching this conclusion was probably more broadly established with respect to the Principal Theatres and Naify Circuit joint ownerships than with regard to the National-United Artists joint ownership

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[40] In finding of fact No. 38, twenty-six corporations, operating seventy-eight theatres, are listed which, during the 1947 to 1950 period, were putative competitors of National, and in which National held an ownership interest of from 25.5% to 90.83%. This is in addition to National's seventy per cent joint interest in United West Coast, which operated fifty-eight theatres under the joint ownership arrangement between National and United Artists. Nor do the figures stated above include the Naify Circuit, in which National also had an interest.

in United West Coast. The latter, however, at the very least gave effect to a meticulous allocation of areas within which the parties agreed not to compete. Such an arrangement is actually illegal *per se*.[41]

The adverse effect which such joint ownerships have upon competition among exhibitors was discussed at length in the *Paramount* case, 334 U. S. 131, at 149-153. While the problem was there viewed primarily from the standpoint of the independent exhibitors, the opportunities for restraining competition which such joint ownerships afford were equally adverse to the interests of independent producers. Plaintiff's only hope of maintaining a strong bargaining position with National was to have available a competing market of independent exhibitors. Every alliance which National made with other exhibitors weakened that competing market.

We hold that, in the main and to the extent required to support the judgment which was entered, the district court's findings concerning National's corporate structure and theatre interests during the 1947 to 1950 period are not clearly erroneous. The conclusions which the court drew therefrom, to the effect that such structures and interests were violative of sections 1 and 2 of the Sherman Act, accord with our view of the law. The adverse effect thereof upon plaintiff during the critical years was sufficiently established to support the finding that plaintiff had been substantially damaged.

* * *

In the above review of particular practices, relationships and corporate interests, we have indicated that, in some respects the findings and conclusions of the district court

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[41] See *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 597-598; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241.

are not sustainable. In the main, however, we had indicated that the findings and conclusions of the district court are supported by the evidence and the law. We therefore hold that the district court did not err in finding and concluding that defendants engaged in proscribed antitrust activities during 1947 to 1950, which resulted in damage to plaintiffs.

Liability—Twentieth Century Fox

Twentieth Century Fox contends that, whatever liability may have been established as to the other defendants, none was established as to Twentieth Century Fox.

In support of this view that company argues that all of the findings upon which liability was predicated related to claimed activities or restraints on the part of National only, in the operation of theatres. Twentieth Century Fox further asserts, in effect, that there is no evidence whatsoever which would support a finding of fact that that company, as a producer or distributor of motion pictures, or otherwise, had engaged in any activities which affected the plaintiff in any respect.

The practices, relationships and interests which were held to constitute such violations are referred to in paragraphs 2 through 13 of the conclusions of law. The principal violations referred to in these conclusions of law relate to the acquisition of monopoly interest, maintenance of joint interests, the formulation of joint operating arrangements, and participation in various forms of agreements and arrangements between defendants and their competitors.

The objective of these various interests, relationships and arrangements was the elimination of competition in the exhibition of motion pictures. This objective was ac-

complished by concentrating buying power in National, dividing and allocating products, granting the right of first refusal or first right to negotiate for film licensing, fixing clearance schedules, and by various other means.

That the district court intended to charge Twentieth Century Fox with many of these violations is demonstrated by the fact that in six of the twelve relevant paragraphs of the conclusions of law, the defendants are referred to collectively, no individual defendant being named (Paragraphs 2, 4-6, 11-12). Three other paragraphs refer to the defendants collectively and also to one or another of the named defendants (Paragraphs 3, 9, 13). It remains to be determined whether the findings of fact support these conclusions of law, insofar as Twentieth Century Fox is concerned.

The findings of fact reveal that the specific acquisitions, all of the joint interests and joint operating arrangements, and most of the various forms of collaboration between defendants and competitors, referred to in the conclusions of law, were engaged in by defendants National or one or more of its subsidiary corporations, Twentieth Century Fox not being expressly named as a participating defendant. This is likewise true, with exceptions to be noted, with regard to the specific means employed in achieving the desired objective of restraining competition in the exhibition of motion pictures.

But the findings of fact refer to at least two ways in which Twentieth Century Fox participated in some of the specific activities which, the district court held, constituted Sherman Act violations.

It was the recipient, and therefore a participant in the practice, of preferential treatment from the Naify Circuit in the booking of pictures. The Naify Circuit gave Twentieth Century Fox the best playing time, including holdings

and extended runs (Paragraphs 86, 87). This necessarily prejudiced all other producers whose films were being exhibited by the Naify Circuit.

In 1945, and again in 1947, Twentieth Century Fox, through its distribution department, received rebates from National in the amount of $500,000 representing additional film rental on pictures produced by Twentieth Century Fox and exhibited in National theatres. The significance of this incident lies in the fact that although uniform film-rental schedules were purportedly prescribed by National, that company, was in effect, passing along to Twentieth Century Fox some of the profits it realized by imposing low rental rates on competing producers, including plaintiff.

These findings are sufficient, we believe, to support the district court's conclusion that Twentieth Century Fox is liable to plaintiff for damage proved. They establish that Twentieth Century Fox was a participant in, and a beneficiary of, the combinations, contracts and conspiracies found to exist. It must therefore share responsibility for the resulting damage, including that occasioned by activities in which it did not directly participate, or from which it did not directly benefit.[42]

Damages

The district court found that, by reason of defendants' conduct in violation of sections 1 and 2 of the Sherman Act, plaintiff sustained actual damages in the amount of $100,000 during the period from May 16, 1947 to May 16, 1950.

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[42]Twentieth Century Fox indirectly partcipated in, and benefited from, the activities of National and its subsidiaries, through its one hundred per cent ownership of National. In view of our holding stated immediately above, however, we need not decide whether this would be an independent reason for deciding that the findings of fact support the conclusion that Twentieth Century Fox is liable to plaintiff.

Under their argument as to the amount of damages defendants assert that a study of the revenues received by plaintiff during this period will demonstrate that no damage was sustained, and that the finding of $100,000 actual damages is therefore clearly erroneous. Specifically, defendants urge that an examination of the evidence pertaining to the results from the exhibition of the seven pictures in question shows that National's treatment of plaintiff's pictures compares favorably with its treatment of comparable pictures of other producers. They also insist, on the basis of this evidence, that National's treatment of plaintiff's pictures compares favorably with the treatment accorded them by other exhibitors.[43]

On its cross appeal, plaintiff contends that the district court erred in finding that plaintiff's actual damages were only $100,000, asserting that they were not less than $300,000.

Plaintiff first argues that defendants' studies covering National's treatment of plaintiff's pictures as compared to its treatment of comparable pictures of other producers is

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[43]Defendants presented this evidence in the form of four studies. The first three of these were studies of box-office revenue per unit and film rental per unit, picture by picture and theatre by theatre on first-runs in National and non-National theatres in, respectively, selected cities of the United States, selected cities of western United States, and in eight groups according to population sizes. The fourth study, really comprising three individual studies, was of performance and treatment of Goldwyn pictures, one by one, in National and RKO first-run theatres in selected cities of the United States, and in cities of varying population size.

On the basis of the first three of these studies, and charts developed therefrom, defendants contend that the film rentals paid by National for the Goldwyn pictures compared favorably to those paid by first-run exhibitors in the larger cities, in relation to box-office receipts. On the basis of the fourth study, defendants conclude that National paid as well or better for the Goldwyn pictures than did RKO, plaintiff's distributing agent.

irrelevant, the only question being whether plaintiff received the price it would have obtained in an open and competitive market. Second, plaintiff contends that the conclusion defendants draw that plaintiff received non-discriminatory treatment from National is undermined by the facts concerning National's rebate to Twentieth Century Fox.

Concerning defendants' argument that National's treatment of plaintiff's pictures compares favorably with the treatment accorded them by other exhibitors, plaintiff's challenge is principally on the ground that defendants did not select appropriate non-National exhibitors for comparison and that they utilized improper statistical methods. Taking defendants' data as to film rentals, gross admissions, and the like, and employing what it regards a proper statistical method, plaintiff compares results obtained with its pictures at National, as compared to non-National exhibitors in markets which, according to plaintiff, more nearly resembled competitive markets. Plaintiff presented these materials in the form of six statistical studies. Needless to say, the results were strikingly different from those produced by defendants' studies.[44] Defendants are as critical of plaintiff's studies as plaintiff is of defendants'.

On its cross appeal as to damages, plaintiff does not rely on the opinion testimony of its own witnesses. But in answering defendants' contention, on the appeal, that no dam-

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[44]As a result of its first study, plaintiff computed its damages as a result of assertedly low rentals paid by National on the five Goldwyn pictures exhibited by National in 1947 to 1950, at $469,000. As a result of the other studies, the aggregate estimated damages were, according to plaintiff: 476,000 (second study); $374,069 (third study), $287,675 (fourth study), and $201,898 (fifth study). In addition to the foregoing, plaintiff computes damages of $169,200 (sixth study), this study being limited to the two Goldwyn pictures, ROSEANNA McCOY and MY FOOLISH HEART, which damage, according to plaintiff, is attributable to defendants' "almost total refusal to license."

age was sustained, plaintiff calls attention to opinion testimony which was received in its behalf. James A. Mulvey, President of Samuel Goldwyn Productions, Inc., and Robert Mochrie, Vice President and General Sales Manager of RKO, both testified as to the impact of defendants' theatre holdings and practices upon plaintiff.

Each of them expressed the view that because National bargained on an all-or-none basis, and because it would be financially disastrous should they fail to sell a Goldwyn picture to National, they were obliged to accept film rentals greatly below the levels which would have prevailed in a competitive market. Defendants attack this testimony, and particularly that of Mulvey, most aggressively.[45]

In determining the amount of damages the court apparently found strength and weakness in the evidence submitted by both parties. It arrived at a figure for actual damages which was $100,000 more than the zero damages defendants argued for, and $200,000 less that the minimum damages plaintiff believed the evidence would support.

The court found that, based upon comparisons derived from defendants' figures, plaintiff received $62,000 less from National for WALTER MITTY than would have been received under similar conditions absent the "illegal monopoly" of National. Plaintiff, the court found, similarly received $29,000 less for ENCHANTMENT than it actually received from non-National exhibitors under similar circumstances, absent monopoly factors. The court found that

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[45]Defendants point out that Mulvey did not take part in any of the negotiations for licensing the Goldwyn pictures to National, and had no first-hand knowledge of what went on. They argue that he was not qualified to express an expert opinion as to actual competitive conditions. They further assert that the questions asked of Mulvey on direct examination did not specify, nor were defendants able to develop on cross-examination, the factual data upon which Mulvey purported to rely.

the foregoing figures are not the complete measure of damages for they do not take into account the increase in playing time, absent monopoly factors. The court found that Mulvey's testimony, to the effect that plaintiff was damaged in the amount of $287,675 as to the five pictures exhibited by National, "is persuasive as a base upon which to predicate a reasonable estimate of damages."

None of the studies submitted by either party was so indisputably correct as to warrant a holding on appeal that it is conclusive and controlling as to the amount of damages. Each such study had qualities which gave it probative weight. Each was subject to discount in the light of direct attack or counterbalancing studies. The district court properly appraised these studies in the light of associated testimony and independent opinion evidence. The amount of damages awarded lies within the range of all of the evidence as to damages.

Both as to the appeal and the cross appeal, therefore, we hold that the district court did not err in setting actual damages at $100,000.

Statute of Limitations

Which statute of limitations. All that is said above on the question of damages sustained during the years 1947 to 1950, is said on the assumption that the applicable statute of limitations does not preclude recovery for those years.

This assumption is well founded if the applicable statute of limitations is Cal. Code Civ. Proc., § 338(1) prescribing a three-year period for the commencement of actions upon a liability created by statute, other than a penalty or forfeiture. This action was commenced on May 16, 1950. The

three-year period would accordingly extend from May 16, 1947 to May 16, 1950.

Defendants argue, however, that the applicable statute of limitations is Cal. Code Civ. Proc., § 340(1) prescribing a one-year period for the commencement of actions upon a statute for a penalty or a forfeiture, when the action is given to an individual. This statute is applicable, defendants contend, because an action for treble damages under the antitrust laws is an action for a penalty. The limitation of plaintiff's claim to one year would mean, at most, only two of the Goldwyn pictures would be involved.[46]

Defendants pleaded both the one- and three-year statutes of limitations as defenses to the action. Thereafter, they moved for a partial summary judgment dismissing all claims, if any, of the plaintiff which accrued prior to May 16, 1947. The district court understood from this motion that defendants were then relying only upon the three-year statute of limitations instead of the one-year statute.[47] This assumption was warranted, since otherwise defendants would have asked for dismissal of any claim which accrued prior to May 16, 1949.

When the district court granted partial summary judgment at defendants' request, thereby limiting plaintiff's claims to the 1947 to 1950 period, it was plaintiff, and not

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[46]These two pictures, ROSEANNA MCCOY, and MY FOOLISH HEART, were not licensed to National.

[47]In its order of October 3, 1950, granting defendants' motion for partial summary judgment, reported in *Samuel Goldwyn Productions, Inc. v. Fox West Coast Theatres Corp.*, N.D. Cal., 146 F.Supp. 905, 906, the court said:

> "The applicability of the three year statute of limitations of Cal. Code of Civil Procedure, § 338(1), see Steiner v. 20th Century-Fox, 9 Cir., 1955, 232 F.2d 190, 194, to this proceeding is not in issue on this motion, and may be assumed for the purposes of this motion to be undisputed."

defendants, who sought review by way of petition for a writ of mandamus.

In a pretrial order thereafter entered, the defendants' statement of trial issues are set forth. No issue concerning the one-year statute of limitations is mentioned in this statement. On the contrary, all issues relating to liability and damages were expressly referenced to the period from May 16, 1947 to May 16, 1950.

In proposed findings of fact submitted by defendants at the end of the trial it was stated, among other things, that the defendants "pleaded various affirmative defenses including the defense that any claim for relief accruing prior to May 16, 1947, was barred by limitations. . . ." Defendants' proposed findings with regard to both liability and damages were related to the 1947 to 1950 period, no findings being proposed with regard to the more limited period of 1949 to 1950.

Defendants attribute their reliance, in the district court, on the three-year statute of limitations, to the general assumption then prevailing, based on the language used by this court in *Steiner* v. *20th Century-Fox Film Corp.*, 9 Cir., 232 F. 2d 190, 194 that the three-year statute is the applicable statute. Defendants argue that later court decisions in other circuits, and a district court decision in this circuit,[48] demonstrate that it is the one-year statute which is applicable. In view of these circumstances, defendants assert, they are entitled to take advantage of this new decisional law and now rely on the one-year statute.

We do not agree. If defendants had urged such a view in the district court they would be in a position to assert it here, even if it involved an overruling of our decision in

[48] *Leh* v. *General Petroleum Corp.*, S. D. Calif. 208 F. Supp. 289, now on appeal in this court.

Steiner. But having invited the asserted error which they contend results from application of the three-year statute, defendants are not now in court on that issue. The view just stated, which is applicable with regard to appellate adjudication generally, is especially applicable with regard to a defense, such as the statute of limitations, which is waived unless asserted.

In order to preserve the point for review defendants were not required to request a finding of fact or conclusion of law dealing with the one-year statute. As defendants point out, Rule 52(a), Federal Rules of Civil Procedure, dispensed with the necessity for such requests in order to preserve a point for review. But defendants were required to adhere to the defense of the one-year statute which they advanced in their answer, so that the court would be obliged to rule thereon. Instead, defendants in effect abandoned that defense, as a result of which there was no ruling upon it. The whole trial was had on the theory, asserted by defendants in their motion for partial summary judgment, that the three-year statute is applicable.

Without reaching the question as to which statute is applicable, we hold that, under the circumstances of this case, the district court did not err in applying the three-year statute.

Tolling the statute of limitations. On the cross appeal, plaintiff contends that the trial court erred in holding that, as to Twentieth Century Fox and National, the three-year statute of limitations began to run on May 16, 1947. Plaintiff argues that, as to these defenda ts, the running of that statute of limitations was, pursuant to section 5 of the Clayton Act,[49] suspended during the pendency of

[49]Section 5 of the Clayton Act at the time this action was commenced was found at 38 Stat. 731 (1914). It was amended in 1955. See 69 Stat. 283, 15 U. S. C. § 16(b) (1958).

United States v. *Paramount Pictures, Inc.*, S. D. N. Y. 66 F. Supp. 323, 70 F. Supp. 53, aff'd in part and rev'd in part, 334 U. S. 131; S. D. N. Y., 85 F. Supp 881, aff'd per curiam 339 U. S. 974.[50]

Section 5 of the Clayton Act is quoted in the margin.[51] The *Paramount* case, in which Twentieth Century Fox and National were defendants, was pending as to them from the time the complaint was filed therein on July 20, 1938, until the decree therein became final as to Twentieth Century Fox and National on October 16, 1950.[52] The action now before us was commenced on May 16, 1950, while the *Paramount* case was still pending. Thus, if plaintiff is correct in his contention, the claim should not have been cut off as to Twentieth Century Fox and National on May 16, 1947, but as of July 20, 1935.[53]

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[50] As stated earlier in this opinion, the district court rejected this view in granting partial summary judgment for defendants. *Samuel Goldwyn Productions, Inc.* v. *Fox West Coast Theatres Corp.*, N. D. Cal. 146 F. Supp. 905.

[51] Section 5 read as follows:

> "Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof." (See note 49 above.)

[52] On June 5, 1950 the Supreme Court affirmed, per curiam, the final judgment of the district court. 339 U. S. 974. Petition for rehearing were denied October 16, 1950. 340 U. S. 857.

[53] This gives effect to the California three-year statute of limitations. A claim accruing on July 20, 1935 would have been barred on July 21, 1938, by operation of the California three-year statute of limitations, unless the running of the statute was suspended on July 20, 1938, by the filing on that day of the complaint in the *Paramount* case. Cal. Code Civ. Proc. § 12.

Section 5 (now section 5[b]), specified circumstances under which the running of the statute of limitations in respect to private rights of action arising under the antitrust laws was suspended during the pendency of a prior Government antitrust proceeding. According to its terms, the tolling provisions of that statute apply where it appears that: (1) the United States instituted a civil or criminal proceeding to prevent, restrain or punish violations of any of the antitrust laws, and (2) the person claiming the benefit of the statute has a private right of action arising under the same laws and "based in whole or in part on any matter complained of" in the Government proceeding.

It is not here disputed that the first of these conditions was met. The *Paramount* case was a civil proceeding instituted by the United States to prevent or restrain violations of sections 1 and 2 of the Sherman Anti-Trust Act. The district court did not hold otherwise.

That court, however, held that plaintiff's right of action, while arising under the antitrust laws, is not "based in whole or in part on any matter complained of" in the *Paramount* case, and that therefore the second condition specified in section 5, as enumerated above, was not met.

In reaching this conclusion the district court decided, from a comparison of the complaints in the two cases that there had been a failure to meet the below-quoted test for determining whether this condition of section 5 had been met, as stated in *Steiner* v. *20th Century-Fox Film Corp.*, 9 Cir., 232 F. 2d 190, 196:

> "The same means must be used to achieve the same objectives of the same conspiracies by the same defendants."

Plaintiff argues that the district court erred in concluding that the quoted *Steiner* test was not met. Plaintiff con-

tends that the Goldwyn action is based in part on one or more of the same conspiracies, combinations, contracts or monopolies, having the same objectives, utilizing the same means, and involving the same defendants complained of in *Paramount*.

As one example of a combination complained of in *Paramount*, which is contended to be similar to one on which the Goldwyn action is based, and which has the same objectives, employs the same means, and involves the same defendants, plaintiff refers to one of the alleged combinations and monopolies referred to in paragraph 170, and succeeding paragraphs, of the amended *Paramount* complaint.

In paragraph 170 it is alleged, among other things, that the parent and subsidiary corporations which form "Fox," constitute a combination and monopoly in restraint of trade, which in and of itself had violated sections 1 and 2 of the Sherman Act. One of the objectives of this combination and monopoly, according to paragraph 174 of that pleading, is to monopolize the business of exhibiting motion pictures in areas serving a substantial percentage of the total population of the United States.[54] According to the same paragraph, the means utilized to achieve that objective was, and is, to acquire and maintain a monopoly of such business in the described areas.

According to paragraph 7(a) of that amended complaint, Twentieth Century Fox is engaged in the business of producing, distributing and exhibiting motion pictures,

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[54]This objective is not expressly stated as such in paragraph 174, but is necessarily to be implied from the allegations of that paragraph concerning the means employed. Paragraph 174 reads:

> "174. By acquiring and maintaining a monopoly of the business of exhibiting motion pictures in areas serving a substantial percentage of the total population of the United States."

either directly or through subsidiary or associated companies. National was the only subsidiary named in that pleading (paragraph 7(b)), it being alleged that National is a holding company for the theatre interests of Twentieth Century Fox. It follows that Twentieth Century Fox and National, both of whom were named defendants in *Paramount*, were at least part of the combination and monopoly referred to in paragraphs 170 and 174 referred to above.

It remains to be determined whether the Goldwyn action is based, at least in part, on that alleged combination and monopoly, having the objectives there alleged, utilizing the means there referred to, and directed against the same defendants.

In paragraph 16 of the Goldwyn complaint it is alleged that the defendants, and others acting in concert with them, have violated and are now violating sections 1 and 2 of the Sherman Act by unlawfully combining to restrain trade and commerce, and by monopolizing such trade and commerce. One of the objectives of this combination and monopoly, according to paragraphs 16(a), 17(a) and 18(a) of the Goldwyn complaint, is to monopolize the business of exhibiting motion pictures.[55] According to the same

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[55] As in the case of the analysis of the *Paramount* pleadings, this objective is not expressly stated as such in paragraphs 16(a), 17(a) and 18(a), but is necessarily to be implied from the allegations of those paragraphs concerning the means employed. The paragraphs in question read:

> "[16.]a. Agreeing to acquire and maintain, and acquiring and maintaining a monopolistic combine of first and subsequent run theatres for the exhibition of motion pictures;"
>
> * * * * * * *
>
> "[17.]a. That defendants by their predatory tactics, hereinafter mentioned, establish, increase, maintain and perpetuate a monopolistic buying combine of motion picture theatres;"
>
> * * * * * * * *
>
> "[18.]a. They acquired an effective monopolistic buying combine by the acquisition, leasing, ownership or management

paragraphs, the means utilized to achieve that objective included the acquisition and maintenance of a monopolistic combine of theatres for the exhibition of motion pictures. Twentieth Century Fox and National, being named defendants in the Goldwyn complaint, were alleged participants in the alleged combination and monopoly referred to above.

Comparing the described combinations and monopolies with their respective objectives, means of accomplishment and participants, as set forth in the amended *Paramount* complaint, and in the Goldwyn case, it would seem that all of the similarities are present which are required to meet the *Steiner* test. But defendants argue that the Goldwyn action is not based in part on this particular combination and monopoly alleged in the *Paramount* case, because, in that case the Government did not allege that the monopoly there charged operated to prevent non-theatre-owning producers from licensing their pictures to theatres of producer-exhibitors on fair and reasonable terms. To the contrary,

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of theatres strategically located throughout the states in which the defendants do business."

In the non-charging paragraphs of the complaint there are other background allegations which tend to substantiate this view as to the objectives of the asserted combination and monopoly. Among these are the following:

"The defendants have combined the tremendous buying power arising out of the control of the theatres to purchase film licenses on a non-competitive and monopolistic basis as hereinafter more fully set forth [Paragraph 11].

"In August of 1925, the parent FOX company, acquired approximately one-third of the common stock of WEST COAST THEATRES, INC., predecessor of the defendant FOX WEST COAST, and in March, 1928, it purchased all of the stock of WESCO CORPORATION (now the defendant NATIONAL), a holding company for theatre operating corporations. From this nucleus FOX WEST COAST and NATIONAL erected the buying combine of operating companies by the predatory means and methods hereinafter alleged." (Paragraph 12)

defendants assert, Goldwyn was there charged with being one of those who fostered the monopoly complained of.

We take it that defendants do not mean to question the sufficiency of these allegations in the amended *Paramount* complaint to state a claim. It was not necessary, to state such a claim, that the Government allege that the participants had a specific intent to exclude, or admit on their terms, Goldwyn or others in his position from the theatres which they controlled.

As stated in *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 173, a "specific intent" is not necessary to establish a "purpose or intent" to create a monopoly, but that the requisite "purpose or intent" is present ". . . if monopoly results as a necessary consequence of what was done." Nor was it necessary for the Government to allege that the alleged monopoly power created by the vertical integration in question had actually been exercised.[58]

But what defendants are saying is that, even though these allegations be sufficient to state an actionable combination or monopoly, since it was not alleged that the combination or monopoly there charged operated to prevent non-theatre-owning producers such as plaintiff from licensing their pictures to the theatres controlled by the vertical integration on fair and reasonable terms, that combination and monopoly falls short of, or differs from, the combination and monopoly on which the Goldwyn action is based.

Monopoly power carries with it the power to exclude competition wholly, or to permit competition on terms dictated by the monopoly. In *Paramount*, at page 170, the

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[58]Thus, in *Paramount*, the Supreme Court said, at page 174: ". . . a vertically integrated enterprise, like other aggregations of business units (*United States* v. *Aluminum Co. of America*, 148 F. 2d 416), will constitute monopoly which, though unexercised, violates the Sherman Act provided a power to exclude competition is coupled with a purpose or intent to do so."

Supreme Court stated that a conspiracy to monopolize the business of exhibiting motion pictures, and such fruits of the monopoly as "price," "clearance" and "run" control, are "interdependent." There is, we believe, a like interdependence between the power and purpose to monopolize the exhibition of motion pictures, and control over the terms on which a competing producer will be permitted to exhibit at such theatres. As we view it, the combination and monopoly, allegedly resulting from the vertical integration of Twentieth Century Fox and its subsidiaries was, in essence, the same monopoly and combination described in the Goldwyn complaint.

But, in any event, the tolling statute does not require, and the *Steiner* test does not provide, that all matters complained of in the private action must find a counterpart in the Government action. The private action is only required to be based in part on a matter complained of in the Government suit. The Goldwyn action is based at least in part on an alleged combination and monopoly between Twentieth Century Fox and National having the objective of monopolizing the business of exhibiting motion pictures, such objective being attained by the acquisition and operation of moving picture theatres.

Building on this foundation, plaintiff alleges that this combination and conspiracy has prevented it, as a non-theatre-owning producer, from licensing its pictures to those theatres on fair and reasonable terms. The foundation allegations, which are a substantial and critical part of the Goldwyn case, as so analyzed, related to a combination and monopoly which, in our view, finds substantial similarity in that part of the amended *Paramount* complaint to which reference has been made.

Up to now, our discussion of this point has been predicated upon an analysis of the amended complaint in *Para-*

mount. In the original complaint, filed more than two years earlier, the allegations concerning such a combination and monopoly between Twentieth Century Fox and its subsidiaries are perhaps not as precise. Nevertheless we find therein the essential allegations relating to that combination and monopoly, such that it cannot be said that this matter was complained of for the first time in the amended complaint.[57]

We conclude that the similarity between the combination and monopoly discussed above, as charged in the original and amended complaints in *Paramount,* and as charged

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[57] In the original complaint, as in the amended complaint, National was designated as a subsidiary of Twentieth Century Fox, both being named defendants. Twentieth Century Fox was alleged to be engaged in the business of producing, distributing and exhibiting motion pictures. National was described as a holding company for the theatre interests of the parent company. It was alleged that Twentieth Century Fox was one of the five companies which emerged in the 1920's with production facilities and large theatre holdings. See paragraphs 7(a) and (e), 49, 50 and 126 of the complaint. In paragraph 189 it was alleged, in part:

> "The acquisition of affiliated theatres in different sections and areas of the United States by the producer-exhibitor defendants has resulted in a division of territory between them, so that, in effect, each producer-exhibitor defendant, acting in combination with the other defendants herein, has an independent monopoly of the market for the first-run exhibition of motion pictures in the respective area, or areas, where each operates. . . ."

In paragraph 198 of the original complaint it was alleged:

> "(198) The monopolization of the exhibition of quality films on first or preferred runs in all sections of the United States where affiliated theatres operate or exist has been brought about by the producer-exhibitor defendants herein through the instrumentality of the ownership, operation and control of affiliated theatres, and as such instrumentality, as aforesaid, theatre ownership and control, coupled with the control of production by the producer-exhibitor defendants, or any of them as hereinafter alleged is illegal as violative of the Sherman Anti-Trust Act."

in the Goldwyn complaint, is such that the *Steiner* test has been fully met.[58]

We are not certain whether it was in applying the *Steiner* test, or in advancing what may have been regarded as a separate reason for holding that plaintiff is not entitled to the benefit of the tolling statute, that the statement was made by the district court that plaintiff was not within the "target area" of the *Paramount* case. The "target area" phrase, as the district court indicated, came from the decision of this court in *Karseal Corp.* v. *Richfield Oil Corp.*, 9 Cir., 221 F. 2d 358, 362.

Karseal was not concerned with the question before us as to the application of the tolling statute, but with the wholly different question of whether the complaint in that case stated a claim under the antitrust laws. A private antitrust suit by Karseal Corporation, a manufacturer of an automobile polish, had been dismissed on the ground that an alleged restraint of trade as to the sale of accessories, exercised by Richfield Oil Corporation upon service stations was not, under the pleadings, a proximate cause of the damage the manufacturer claimed to have suffered.

In reversing, this court held that, contrary to the view of the district court, the manufacturer was within the "target area" of the alleged restraint, and therefore had stated an actionable claim. Discussing what it meant by "target area," this court, in *Karseal*, referred to it as a factor in determining whether there was proximate causa-

[58]It is therefore unnecessary for us to decide whether this is likewise true with regard to conspiracies to exclude independently produced films from affiliated theatres, as charged in other sections of the *Paramount* complaint. Nor, in view of the disposition which we have made of this matter, do we find it necessary to pass upon plaintiff's contention that the *Steiner* case was wrongly decided. The cogent arguments made in support of that contention we leave for determination in some future litigation in which such a decision may be required.

tion. At two places in that opinion, there is language indicating that one was not in the "target area" unless he was "aimed at" by the conspirators.

But in using the words "aimed at" this court did not mean to imply that it must have been a purpose of the conspirators to injure the particular individual claiming damages. Rather, it was intended to express the view that the plaintiff must show that, whether or not then known to the conspirators, plaintiff's affected operation was actually in the area which it could reasonably be foreseen would be affected by the conspiracy. This is made clear by our quotation, in *Karseal*, of this excerpt from the opinion in *Conference of Studio Unions* v. *Loew's Inc.*, 9 Cir., 193 F. 2d 51, 54-55:

> "A conspiracy may have many purposes and objects; the conspirators may perform an almost infinite variety of acts in furtherance of the conspiracy; but, in order to state a cause of action under the anti-trust laws a plaintiff must show more than that one purpose of the conspiracy was a restraint of trade and that an act has been committed which harms him. He must show that he is within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry. Otherwise he is not injured 'by reason' of anything forbidden in the anti-trust laws."

Assuming, but not deciding, that this "target area" concept is relevant in determining whether the plaintiff in a private anti-trust suit may claim the benefit of section 5 of the Clayton Act, plaintiff was within that area under the allegations of his complaint. As one which desired to exhibit motion pictures which it produced, plaintiff was

within the area of the economy which was endangered by the alleged combination and monopoly with regard to the exhibition of moving pictures.

We conclude that the district court, in the 1956 ruling which Judge Harris was required to follow when the case was later assigned to him, erred in holding the tolling statute inapplicable as to all defendants. In our opinion, it was applicable as to defendants Twentieth Century Fox and National and, as to them, plaintiff should not have been limited to claims arising on and after May 16, 1947.

Attorneys' Fees

Having rendered a judgment for damages in favor of plaintiff, it was the duty of the district court to allow plaintiff a reasonable attorneys' fee. See section 4 of the Clayton Act, 38 Stat. 731, 15 U. S. C. § 15 (1958). That court fixed plaintiff's attorneys' fees in the amount of $100,000, this being also the amount of the award of actual damages.

We have heretofore, in this opinion, considered and disposed of all of defendants' points on appeal except those relating to attorneys' fees and other court costs. Accordingly, the award of $100,000 actual damages, tripled to $300,000 has been sustained, and plaintiff's right to attorneys' fees has been confirmed. Defendants, however, contend that the allowance of $100,000 attorneys' fees is excessive, and that no more than $25,000 should have been awarded.

The amount of attorneys' fees to be allowed in connection with an award of damages in an antitrust suit is within the discretion of the trial court, reasonably exercised, and will not be disturbed absent an abuse of discretion. *Montague*

& Co. v. Lowry, 193 U. S. 38, 48. We may, however, have somewhat more latitude in determining whether there has been an abuse of discretion than would be true in the usual case, since the judge who fixed the fee came into the case after most of the legal services had been rendered. See *Monaghan* v. *Hill*, 9 Cir., 140 F. 2d 31, 34.

In *Noerr Motor Freight, Inc.* v. *Eastern Railroad Presidents Conference*, E. D. Pa., 166 F. Supp. 163, 168-169, aff'd, 7 Cir. 273 F. 2d 218, rev'd on other grounds, 365 U. S. 127, there are listed some of the factors which have been considered by the courts in making an award of a reasonable attorneys' fee in an antitrust suit, or in reviewing such an award on appeal. As there listed, these factors include: (1) whether plaintiff's counsel had the benefit of a prior judgment or decree in a case brought by the Government, (2) the standing of counsel at the bar—both counsel receiving the award and opposing counsel, (3) time and labor spent, (4) magnitude and complexity of the litigation, (5) responsibility undertaken, (6) the amount recovered, (7) the knowledge the court has of the conferences, arguments that were presented and of work shown by the record to have been done by attorneys for the plaintiffs prior to trial, (8) what it would be reasonable for counsel to charge a victorious plaintiff, and (9) what contribution shall be made by the defendant toward the fees of plaintiff's counsel.

While all or most of these factors are useful as guides in fixing such fees, they provide nothing approaching a precise yardstick. In the long run, the weight to be accorded these and other factors in fixing the fees in a particular case must rest largely upon the good judgment of the district court.

Such fees are usually fixed at a level substantially below the amount of actual damages awarded. There are, how-

ever, cases in which the fee exceeded, or very nearly equaled the damage award.[59] There is no doubt that counsel for plaintiff did a prodigious amount of work in preparing this case for trial, and in trying it.[60] Defendants do not contend to the contrary. They do question the necessity for much of this work. However, this is almost like saying that plaintiff could have won more easily—a not very telling argument when made by those who contend that plaintiff should not have won at all.

The lawsuit was most vigorously contested from beginning to end. Numerous complex legal and factual issues were involved. The principles established and elements of proof developed have significance beyond the amount of the damage award. They are, to a considerable extent, pertinent to plaintiff's further proceedings against Twentieth Century Fox and National, authorized herein, in prosecution of the claim for damages covering the years 1935 to 1947.

We conclude that, under all of the circumstances of this case, the award of attorneys' fees in the sum of $100,000 does not manifest an abuse of discretion. Should plaintiff recover additional damages in the further proceedings to be had herein, the district court will undoubtedly

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[59] In the *Webster Car Co.* case, Judge Holtzoff, using a number of previous antitrust suits as guides, concluded that an allowance of from twenty-three to twenty-four per cent of the single damages would constitute a reasonable fee. On the other hand, plaintiff calls attention to the fees allowed in nine cases, in five of which the amount exceeded or nearly equaled the damage award. In plaintiff's remaining four cases, the fee ranged from thirty-four per cent to sixty-seven per cent of the single damages.

[60] Plaintiff's attorneys expended approximately 12,912 hours to and including the trial of the case. The $100,000 fee awarded represents something less than eight dollars an hour for this much time.

take into consideration, in allowing further attorneys' fees, the size of the allowance already made and the extent to which services already rendered are utilized in the further proceedings.

Plaintiff asks for an award of reasonable attorneys' fees on this appeal in the event of affirmance. Defendants do not oppose this request.

We find and determine that $5,000 is a reasonable sum to be awarded plaintiff for attorneys' fees on this appeal. That sum shall be included and taxed as part of the costs in this court.[61]

ASSESSMENT OF COSTS

After entry of judgment but before the appeal and cross appeal were taken, plaintiff claimed costs in the sum of $154,080.12. Defendant filed objections to the cost bill as a whole, and as to individual items comprising a major part of the claimed costs. The clerk of the district court allowed costs in the amount of $5,955.15.

Plaintiff initiated proceedings in the district court to review the clerk's action. These proceedings were pending when the main appeal and the cross appeal were taken. Thereafter, the district court taxed costs at $66,507.31. Defendants thereupon appealed from this order.

Defendants argue that the major amount of the costs, as fixed by the district court, relate to expenditures which are not recoverable as "costs," and which are not of a kind which the district court could, in its discretion allow. Before we can reach this argument, however, we must deal

[61] See *American Crystal Sugar Co.* v. *Mandeville Island Farms, Inc.*, 9 Cir., 195 F. 2d 622, 626; *North Texas Producers Ass'n* v. *Young*, 5 Cir. 308 F. 2d 235, 246.

with plaintiff's intimation that the order of the district court taxing costs may not be appealable.[62]

The rule which plaintiff seeks to invoke is, that a judgment for costs only is not appealable except as to the issue of the power of the court to assess costs.[63] Since defendants here question only the power of the court to allow certain items of costs, and not the court's discretion in fixing the amount of allowable costs, this appeal from the order fixing costs falls within the exception to the rule on which plaintiff relies. Moreover, this appeal from the order fixing costs is so related to the general judgment on appeal which was then pending, that it should be considered an inseparable part thereof, and not an appeal from an order for costs only in the usual sense.

We hold that the order in question is appealable.

Plaintiff claimed accounting fees in the sum of $117,781.58, made up of the items listed in the margin.[64] Defend-

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[62]Plaintiff does not categorically assert that the order is not appealable, indicating only that appealability is "doubtful."

[63]The rule is so stated in *Newton* v. *Consolidated Gas Co.*, 265 U. S. 78, 83, and many other cases. However, there are other decisions, including the decision of this court in *Komart Corp.* v. *Printing Arts Research Lab., Inc.*, 9 Cir., 232 F. 2d 897, 898, where a judgment for costs only has been held not appealable except where the power or right of the court to assess certain items of costs is in dispute, *or* where there is a claim as to abuse of discretion. The latter version of the rule would seem to encompass any ground on which an appeal would normally be based. See 6 Moore's Federal Practice, 2d ed., § 54.70(5), pages 1308-1313, for a review of the cases.

[64]"4. Accounting Fees:

"(a) Joseph A. Walsh (10-30-54 to 8-19-60)	$71,850.00
(b) Price Waterhouse & Co. (5-2-55 to 1-58)	36,929.50
(c) Comptometer Operators (1-56 to 3-58)	6,757.95
(d) Office Machines, Inc. (1-24-56 to 12-28-57) (Accounting machine rental)	1,869.13
(e) Marchant Co. (11-54 to 1-56) (Accounting machine rental)	375.00"

ants made several specific objections to these claimed accounting fees. The district court disallowed the $71,850. item representing the accounting fees of Joseph A. Walsh, and allowed the remaining accounting items in the total amount of $45,931.58.

Defendants argue that accounting fees are not allowable "costs" within the meaning of Rule 54(d), Federal Rules of Civil Procedure.[65] *Union Carbide & Carbon Corp. v. Niseley*, 10 Cir. 300 F. 2d 561, 586, so holds.[66]

But plaintiff calls attention to the fact that, in providing for this item of recovery, section 4 of the Clayton Act, 15 U. S. C. § 15, uses the words: ". . . the *cost* of suit, including

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[65]Rule 54(d) reads:

"(d) **Costs.** Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one days' notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

28 U.S.C. § 1920, which is also relevant, reads:

"**§ 1920. Taxation of costs**

"A judge or clerk of any court of the United States may tax as costs the following:

(1) Fees of the clerk and marshal;

(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;

(3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title.

"A bill of costs shall be filed in the case and upon allowance, included in the judgment or decree."

[66]To the same effect, see *Clapper v. Original Tractor Cab Co.*, S. D. Ind. 165 F. Supp. 565, 599, reversed on other grounds, 7 Cir., 270 F. 2d 616.

a reasonable attorney's fee," (emphasis supplied), while Rule 54(d) refers to "costs." Plaintiff also makes reference to the legislative history of section 7 of the Sherman Act, 26 Stat. 209 (1890), which was the forerunner of section 4 of the Clayton Act, and other materials. Based thereon, plaintiff argues that, in private antitrust actions a prevailing plaintiff is not limited to costs as contemplated by Rule 54(d) and 28 U. S. C. § 1920, but is entitled to "costs as between solicitor and client" in all such actions.

This same contention, in substance, was rejected in *Straus v. Victor Talking Mach. Co.*, 2 Cir., 297 Fed. 791, 806. In the more recent case of *Brookside Theatre Corp. v. Twentieth Century Fox Corp.*, W. D. Mo. 11 F. R. D. 259, 265, modified (by reducing the attorneys' fees allowed), in 8 Cir., 194 F. 2d 846, 858, it was held that there are no special or peculiar rules for antitrust actions and "the amounts allowed as costs of suit should reasonably conform to what is commonly understood to be the 'cost of suit.'" The *Union Carbide* case, referred to above, reached the same result.

Plaintiff further argues that this court has heretofore sanctioned the awarding of costs to cover accounting fees, citing *Monaghan v. Hill*, 9 Cir., 140 F. 2d 31, 34-35.

Monaghan was not an antitrust suit, but was a class suit in which a fund had been created for the benefit of a class. The court held that the expenses of creating the fund, including accounting fees, were payable out of the funds recovered for the members of the class who accept the benefits. The expenses allowed were not an additional amount assessed against the defendant.[67]

[67]Costs against a defendant, in addition to those enumerated in 28 U.S.C. § 1920, are allowable in certain kinds of actions sounding in equity. See *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 164.

We hold that the only costs recoverable by a successful plaintiff in a private antitrust suit are those which are normally allowable under 28 U. S. C. § 1920 and Rule 54(d), and that such costs do not include accounting fees. The allowance herein of $45,931.58 for accounting fees was improper and is set aside.[68]

Defendants object, on various grounds, to the allowance of costs for the expense of reproducing documents by photostating or otherwise, the expense of a second copy of the transcript of the trial for the use of plaintiff's counsel, the expense of transcribing arguments, pretrial proceedings and the like, witness fees in one instance, and an item for "expressage for Exhibits and Documents," allowed in the sum of $479.

We think that the allowance of the expense for "expressage" as costs was improper. The other items referred to above, were allowable and, under the circumstances of this case, the amounts allowed do not manifest an abuse of discretion.

Admissibility of Findings and Conclusions Made and Sustained in the Paramount Case

We have now disposed of all questions raised on defendants' appeal, and two of the three questions raised on the cross appeal. The final question presented on the cross appeal relates to the ruling of Judge Murphy excluding from the evidence received at the trial certain findings of fact

[68] It is unnecessary for us to consider defendants' additional contentions that the allowance for accounting fees was improper because the fees were not authorized by the court before they were incurred, and because there was assertedly no showing what the accounting services were or to what extent the product thereof was used at the trial.

and conclusions of law entered in *United States* v. *Paramount Pictures, Inc.*, S. D. N. Y., 70 F. Supp. 53, and thereafter sustained by the Supreme Court, 339 U. S. 974.

In paragraphs 20 and 23 of the complaint herein, certain facts were alleged concerning the *Paramount* case. These allegations were intended to provide a foundation in the pleadings for the introduction in evidence, as against Twentieth Century Fox and National who were defendants in *Paramount*, of certain of the findings of fact and conclusions of law entered in that case. In following this course plaintiff sought to take advantage of the first paragraph of section 5 of the Clayton Act, 38 Stat. 731 (1914).[69]

On September 15, 1950, and before any answer was filed, defendants filed a notice of motion "to strike and/or for a more definite statement." This motion was directed exclusively to paragraphs 20 to 23 of the complaint, referred to above. It was asserted, in effect, that under the facts

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[69]Prior to the 1955 amendment, section 5 of the Clayton Act read, in part:

> "Sec. 5. . . . [A] final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, This section shall not apply to consent judgments or decrees entered before any testimony has been taken; Provided further, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken."

The text of the present section 5(a) is now found at 69 Stat. 283 (1955), 15 U. S. C. § 16(a) (1958).

alleged in the complaint, and upon a proper construction of section 5 of the Clayton Act, the final judgment or decree rendered in the *Paramount* case does not, as contended for by plaintiff, constitute prima facie evidence against defendants on the question of violation of the antitrust laws.

This motion was heard on September 25, 1950 by The Honorable Michael J. Roche, who was then sitting as presiding judge in the master calendar department of the district court. On October 9, 1950, Judge Roche denied the motion "at this time."

On June 14, 1956 plaintiff served on the Fox defendants, and filed, a motion for a pretrial conference, one purpose being to obtain a ruling as to the admissibility, as against Twentieth Century Fox and National, of the judgments, findings of fact and decrees in the *Paramount* case. This motion was argued before Judge Murphy who, on October 3, 1956, entered an order holding that the judgments, findings of fact and decrees in the *Paramount* case were inadmissible in evidence in this case.[79] During the course of the trial before Judge Murphy, the *Paramount* judgments, decrees, findings and conclusions were offered in evidence by plaintiff, but were rejected on the basis of the court's prior ruling.

Without the benefit of these *Paramount* documents, plaintiff has nevertheless established liability as to all defendants covering the years 1947 to 1950. It follows that the exclusion from the evidence of the *Paramount* findings and conclusions has not prejudiced plaintiff as to those years.

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[79] At the same time, Judge Murphy granted the motion for partial summary judgment referred to above opposite note 9. The views of Judge Murphy on both motions are expressed in his reported opinion of October 3, 1956. *Samuel Goldwyn Productions, Inc.* v. *Fox West Coast Theatre Corp.*, N. D. Cal., 146 F. Supp. 905.

But we have held that plaintiff is entitled to proceed with its claims against Twentieth Century Fox and National for the years 1935 to 1947. It is therefore appropriate to decide now, for the guidance of the district court in the further proceedings, whether the *Paramount* findings and conclusions are admissible as against those defendants in the further proceedings.

Section 5 (now section 5[a]), states a rule of evidence with respect to final antitrust judgments or decrees in favor of the United States. It provides, with exceptions not here material, that in a subsequent private antitrust suit, any such final judgment or decree shall be admissible as evidence, and constitute prima facie proof against the defendant, ". . . as to all matters respecting which said judgment or decree would be an estoppel as between the parties. . . ." to the predecessor Government antitrust suit.

The "matters" referred to in this statute are the direct determinations of fact and law against the defendant in the prior suit on questions there distinctly put in issue. See *Emich Motors Corp.* v. *General Motors Corp.*, 340 U. S. 558, 569. If any such determinations, considered as evidence, would be relevant with regard to any issue of fact and law in a subsequent treble-damage action involving the same defendant, they are admissible, under section 5, as prima facie evidence of the fact or law so determined.

In *Emich*, the prior Government action had been tried before a jury, which returned a general verdict. As the court stated in that case, a general verdict of the jury or judgment of the court without special findings does not indicate which of the means charged in the indictment were found to have been used in effectuating the conspiracy. Thus the only matter concerning which the judgment in that Government case could be regarded as prima facie evidence,

was the general conspiracy for the purpose of monopolizing the financing of General Motors, and its effectuation by coercing General Motors dealers to use GMAC.

But the *Paramount* case was tried to the court without a jury and detailed findings of fact and conclusions of law were made and obtained finality when thereafter sustained on appeal. As to each of these findings of fact and conclusions of law, Twentieth Century Fox and National would be estopped in any subsequent action against them by the Government. Plaintiff was accordingly entitled, under section 5, to introduce in evidence any of the *Paramount* findings and conclusions which were adverse to Twentieth Century Fox or National, and which are relevant to any of the issues in Goldwyn case, as prima facie evidence supporting plaintiff's position on those issues.[71]

In plaintiff's opening and reply briefs on the cross appeal there are set forth a number of findings of fact and conclusions of law entered and sustained in the *Paramount* case which, plaintiff contends, are adverse to Twentieth Century Fox or National and relevant to issues of fact or law involved in the Goldwyn case. Defendants have not, in their brief, discussed these particular *Paramount* findings or conclusions, or their relevancy to the issues of the Goldwyn case. They have, instead, directed their argument mainly to the broad question of the proper construction of section 5, an argument rejected by what we have already said.

Because there has thus been no meeting of arguments on the question of what *Paramount* findings and conclusions, sustained on that appeal, are adverse to Twentieth Century

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[71] In *Emich*, at page 568, the court said:

> "We think that Congress intended to confer, subject only to a defendant's enjoyment of its day in court against a new party, as large an advantage as the estoppel doctrine would afford had the Government brought suit.

Fox or National, and which of these adverse findings and conclusions, if any, are relevant to any issue in the Goldwyn case, we will not attempt to decide these matters on this appeal. In the further proceedings to be had against these two defendants, the district court will be able to deal with this problem in keeping with the principles stated in this opinion. It need only be added that, in our view, the fact that at an early stage of the *Paramount* case, Samuel Goldwyn, as an individual, was named as a defendant and co-conspirator, has nothing whatever to do with the applicability of section 5 in the Goldwyn case.

* * * * * * *

As to Fox West Coast Theatres Corporation and Fox West Coast Agency Corporation, the judgment is affirmed on the appeal and the cross appeal, except that the allowance of accounting fees and express charges as court costs is set aside.

As to Twentieth Century Fox and National, the judgment insofar as it adjudicates claims for the period from May 16, 1947 to May 16, 1950, is affirmed on the appeal and cross appeal, with the same exceptions as to accounting and express fees, and shall be regarded as a partial judgment. Insofar as the judgment dismisses claims for the period prior to May 16, 1947, the judgment as to Twentieth Century Fox and National is reversed on the cross appeal and the cause is remanded for further proceedings consistent with this opinion.

Plaintiff will recover ninety per cent of its cost in this court together with an attorneys' fee in the sum of $5,000.

(Endorsed) Opinion Filed Jan. 24, 1964.

Frank H. Schmid, Clerk.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 17725

TWENTIETH CENTURY-FOX FILM CORPORATION, et al.,
Appellants,

vs.

SAMUEL GOLDWYN, et al.,
Appellees.

APPEAL from the United States District Court for the Northern District of California, Southern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division and was duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be and hereby is as to Fox West Coast Theatres Corp., and Fox West Coast is affirmed on the appeal and cross-appeal except that the allowance of accounting fees and express charges as court cost is set aside. As to Twentieth Century and National the judgment

insofar as it adjudicates claims for the period from May 16, 1947 to May 16, 1950, is affirmed on the appeal and cross appeal, with the same exceptions as to accounting and express fees, and shall be regarded as a partial judgment. Insofar as the judgment dismissed claims for the period prior to May 16, 1947, the judgment as to Twentieth Century and National is reversed on the cross-appeal and the cause is remanded for further proceedings consistent with the opinion of this court, plaintiff to recover ninety (90) per cent of its cost in this court together with an attorneys' fee in the sum of $5,000.

Filed and entered January 24, 1964

APPENDIX B

Excerpts of Material From *United States* v. *Paramount*

Paragraphs from the Petition in the Paramount Case

(12) (a) United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries. [25]

(b) Of the individual defendants, Attilio H. Giannini is President, a Director and Chairman of the Board of Directors, George J. Schaefer, Harry D. Buckley and Arthur W. Kelly are Vice-Presidents, Lloyd Wright is Secretary and Harry J. Muller is Treasurer, of said defendant United Artists Corporation; Mary Pickford is First Vice-President and a Director, Dennis F. O'Brien is General Counsel and a Director, Edward C. Raftery is Assistant Secretary and a Director, and Charles Chaplin, Douglas Fairbanks and Samuel Goldwyn are Directors, of the said defendant United Artists Corporation. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the said parent corporation, United Artists Corporation. [26]

* * * *

(59) *Producer.*—This term includes, without limitation, all persons, partnerships, associations and corporations who engage or contract to engage in the production of motion pictures.

(60) *Major producer.*—A major producer is one of the eight parent companies defendants herein. Strictly speaking, however, the defendant United Artists Corporation is a distributor rather than a producer.

Paragraphs from the Amended Complaint in the Paramount Case

(61) *Independent producer.*—A producer who is not in any way affiliated with the major producers. [46]

* * * *

(80) *Distributor.*—A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. The prints are usually licensed to the exhibitor. However, the arrangement is frequently referred to in the industry as a sale.

(81) *Major Distributor.*—A distributor who is one of the eight parent companies defendants herein.

(82) *Independent Distributor.*—A distributor who is not in any way affiliated with the major distributors. [50]

* * * *

14. The following terms when used in this complaint have the meaning indicated:

PRODUCTION

15. (a) *Producer.*—Any person, partnership, association or corporation engaged in the production of motion pictures.

(b) *Major Producer.*—One which produces motion pictures for release by a major distributor pursuant to a prior understanding or agreement with such major distributor.

Paragraphs from the Amended Complaint in the Paramount Case

(c) *Independent Producer.*—One which is not a major producer. [8]

* * * *

16. (a) *Distributor.*—Any person, partnership, association or corporation engaged in the business of licensing motion pictures for exhibition and distributing the positive prints of such motion pictures to exhibitors.

(b) *Major Distributor.*—A distributor which is a defendant herein or is controlled by a defendant herein.

(c) *Independent Distributor.*—One which is not a major distributor.

(d) *State Rights Distributor.*—An independent distributor which does not operate a system of national exchanges but buys from an independent producer the exclusive right to distribute its pictures in a particular state or territory. [9]

* * * *

84. United Artists now distributes pictures for the following producers among others: Samuel Goldwyn, Charles Chaplin, Mary Pickford, Alexander Korda, and London Film Productions, Ltd., Selznick International, Edward Small, Sol Lesser, Hal Roach, David Loew, Ernest Lubitsch, Walter Wanger, and Richard Rowland. [32]

85. United Artists maintains exchanges in 26 cities.

86. The corporation is owned by five stockholders, Charles Chaplin, Samuel Goldwyn, Mary Pickford, the Estate of Douglas Fairbanks, and Alexander Korda. It issues no public statement of gross assets or business done, but for the fiscal year ended in 1939 its gross income exceeded $10,000,000. [33]

Excerpts from the Caskey Affidavit Relating to Pre-Trial Statements by the Government in the Paramount Case

21. Interrogatory 1(b) inquired as to all documents relied upon by the government to sustain the charge contained in Paragraph 17-4 of the Petition that certain defendants had attempted to monopolize and had monopolized the exhibition of motion pictures in first-run metropolitan theatres. The Government listed and described 540 exhibition licenses as containing facts relied upon by it. Among the documents so listed were a number which dealt with the licensing of Goldwyn pictures.

* * * *

22. I identify below the agreements listed by the Government which are described as relating to the licensing of the Goldwyn productions in theatres affiliated with *Paramount* case defendants.

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT

	Date of Contract	Distributor	Exhibitor	Period Covered
186.	1/17/39	United Artists Corp. (1 Samuel Goldwyn Production) * * *	Saenger Theatres, Inc.	1938-39 Season
194.	12/ 1/38	United Artists Corp. (2 Samuel Goldwyn Productions) * * *	Interstate Circuit, Inc.	1938-39 Season
211.	12/22/38	United Artists Corp. (4 Samuel Goldwyn Productions) * * *	Minnesota Amusement Co.	1938-39 Season
223.	12/22/38	United Artists Corp. (4 Samuel Goldwyn Productions) * * *	Minnesota Amusement Co.	1938-39 Season
229.	10/22/38	United Artists Corp. (4 Samuel Goldwyn Productions) * * *	Tri-States Theatre Corp.	1938-39 Season
235.	9/30/38	United Artists Corp (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season

Excerpts from the Caskey Affidavit Relating to Pre-Trial Statements by the Government in the Paramount Case

UNITED ARTISTS CONTRACTS WITH WARNER BROS. THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
480.	10/24/38	United Artists Corp. Covers exhibition of Samuel Goldwyn production in the Warner circuit.	Warner Bros.	1938-39 Season

UNITED ARTISTS CONTRACTS WITH FOX THEATRES.

	Date of Contract	Distributor	Exhibitor	Period Covered
537.	4/11/39	United Artists Corp. Covers move over exhibition of one Samuel Goldwyn production.	Fox West Coast Theatres	1938-39 Season

23. Interrogatory 2(b) inquired as to the Government's charges contained in Paragraph 174 of the petition that certain defendants had combined with each other and with the producer-distributor defendants and with the distributor defendant (United Artists) to monopolize the market for the exhibition of motion pictures in certain theatres. In its answer the Government incorporated by reference its answer to Interrogatory 1(b).

24. Interrogatory 8 inquired as to charges which were contained in Paragraphs 186 and 190 of the petition that certain defendants had attempted to monopolize and had monopolized first or preferred run exhibition of motion pictures throughout the United States wherever any theatres affiliated with any one or more of the defendants operated or existed. The Government's answer to this interrogatory incorporated again by reference its answer to

Excerpts from the Caskey Affidavit Relating to Pre-Trial Statements by the Government in the Paramount Case

Interrogatory 1(b) . . . and listed 500 additional documents which it claimed supported its charge. Among the documents so listed were many which related to Goldwyn pictures. * * * I identify below the agreements listed by the Government which are described as relating to the licensing of Goldwyn productions in theatres affiliated with *Paramount* case defendants:

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT

	Date of Contract	Distributor	Exhibitor	Period Covered
314.	12/ 1/38	United Artists Corp. (3 Samuel Goldwyn Productions)	Texas Consolidated Theatres, Inc.	1938-39 Season
315.	12/ 2/38	United Artists Corp. (3 Samuel Goldwyn Productions)	Texas Consolidated Theatres, Inc.	1938-39 Season
330.	12/31/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Jefferson Amusement Co.	1938-39 Season
336.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
342.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
348.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
354.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
360.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Paramor Theatre Co.	1938-39 Season

Excerpts from the Caskey Affidavit Relating to Pre-Trial Statements by the Government in the Paramount Case

	Date of Contract	Distributor	Exhibitor	Period Covered
366.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Menmar Theatre Co.	1938-39 Season
372.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season

WITH RKO THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
483.	1/16/39	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 Season
488.	9/13/38	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 Season
494.	9/13/38	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 Season

25. Defendants' Interrogatory 9 inquired as to the charge contained in Paragraphs 186 to 190 of the Government petition that certain defendants had combined and conspired with each other and with the producer-distributor defendants and with the distributor defendant (United Artists) to monopolize the first or preferred run exhibition of motion pictures throughout the United States wherever any theatre affiliated with one of the defendants operated or existed. In its answer to this interrogatory, the Government incorporated by reference its answers to Interrogatories 1(b) and 8(b), referred to and identified above, as containing the documentary evidence upon which it intended to rely. * * *

Excerpts from the Caskey Affidavit Relating to Pre-Trial Statements by the Government in the Paramount Case

26. Interrogatory 6 inquired as to the charge contained in Paragraph 182 of the Government petition that the defendants made their pictures available for exhibition in first-run theatres of the defendants to the exclusion of the motion pictures of all other producers. The Government's answer incorporated its answers to Interrogatories 1(b) and 8(b) which are identified above.

* * *

27. Interrogatory 7 inquired as to the charges contained in Paragraphs 120, 121 and 183 of the Government's petition that certain defendants had dominated, controlled and monopolized the market for the exhibition of motion pictures in first-run metropolitan theatres throughout the United States and that the incentive to "independent" production had been decreased by reason of the inability of "independent" producers to gain access to that market. In answer, the Government again incorporated by reference its answers to Interrogatories 1(b) and 8(c) which are identified above.

* * *

28. Interrogatories 3 and 4 inquired as to charges that independent producers had been excluded from defendants' theatres and had attempted to license pictures to defendants' theatres and been refused. Respecting the identity of the producers whom the Government claimed had been so excluded, the Government answers listed the names and addresses of twenty-two persons. Goldwyn's name was not listed.

* * *

Later, the Government filed additional answers to these interrogatories. It set forth additional names of individuals engaged in some phase of the production or distribution business whom it claimed had been affected, together with a statement of the testimony which it asserted would be elicited from these individuals if called as witnesses. Goldwyn was not listed.

* * *

The Expediting Court referred to master agreements and franchises as unlawful trade practices, as follows (66 F. Supp. 323, 338):

> "As further evidence of a conspiracy among the distributors to fix prices, we find master agreements and franchises between various of the defendants in their capacities as distributors and various of the defendants in their capacities as exhibitors. These contracts stipulate minimum admission prices often for dozens of theatres owned by an exhibitor-defendant in a particular area of the United States.
>
> * * *
>
> "A master agreement between United Artists as distributor and Fox as exhibitor for the season 1938-39 covered distribution of pictures of five independent producers in Fox theatre circuits in Los Angeles, San Francisco, Salt Lake City, St. Louis, Milwaukee, Omaha, Denver, and other cities, all on a percentage basis. It contained the following clause: 'Where pictures are licensed on a percentage rental basis the scale of admission prices to be not less than the scale of admission prices charged to view pic-

tures of comparable quality exhibited by the exhibitor and distributed by distributors other than United Artists.' The foregoing quotation shows an acquiescence of United Artists in admission prices fixed by any other distributor and an adherence to those prices in its own licenses. Plaintiff's Exhibit 199."*

And further with respect to formula deals made by RKO and Paramount (60 F. Supp. 323, 346-47):

> "Formula deals, certain master agreements, and franchises have tended to restrain trade in the distribution and exhibition of motion picture features and in view of the history and relation to the moving picture business of the various parties to this action have exercised unreasonable restraints."

Goldwyn's consent to Government Exhibit 195, a ten year franchise between United Artists Corporation and Publix Theatres Corporation (Paramount) reads:

---

*In the above-quoted portion of the court's opinion there is the statement that the master agreement covered the distribution by United Artists of the pictures of five independent producers. Read in context it, of course, is obvious that the court was not using the term "independent producer" in the particular sense that it was defined by the Government or used throughout the *Paramount* case. Rather, it was merely pointing up the fact that United Artists did not produce the pictures which it distributed and which, as the Government had charged, were the pictures produced primarily by those who were the stockholders of United Artists. And it must be plain that the court was not using the term "independent producer" in any sense as referring to producers who had been excluded from or denied access to affiliated theatres, for the exhibit itself was used by the court to illustrate unlawful licensing practices attaching to these four pictures in these very affiliated theatres.

Government Exhibits at the Trial of the Paramount Case

"Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule 'A' of said contract.

"Dated, February 4th, 1928.

SAMUEL GOLDWYN,

By /s/ Samuel Goldwyn (signed)

SAMUEL GOLDWYN, INC.,

By /s/ Samuel Goldwyn (sgnd)
Pres."

Government Exhibits at the Trial of the Paramount Case

Exhibit 195 was singled out for condemnation by the Expediting Court, as follows (66 F. Supp. 323, 352):

> "These provisions [that is, the discriminations referred to in the preceding paragraph of the opinion, among them being the exclusion of 'foreign pictures and those of independent producers'] are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Record pp. 1432, 1433; Columbia's Exhibit 9a; Universal's Exhibit 2; Plaintiff's Exhibits 195, 198, 259, 261, 265-266a, 384, 396, 470-473."

Excerpt from Government Exhibit 93:

Picture	Billings	Total Rental
UP IN ARMS (Goldwyn)	10,149	$2,751,693
LADY TAKES A CHANCE (Ross)	13,987	1,955,781
TENDER COMRADE (RKO)	11,733	1,825,300
NORTH STAR (Goldwyn)	10,141	1,759,419
SHOW BUSINESS (RKO)	11,780	1,703,990
GOVERNMENT GIRL (RKO) ..	12,507	1,628,005
STEP LIVELY (RKO)	10,286	1,347,557

Office-Supreme Court, U.S.
FILED
MAY 19 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 103

TWENTIETH CENTURY-FOX FILM CORPORATION, et al.,

Petitioners,

—against—

SAMUEL GOLDWYN, et al., doing business as GOLDWYN PRODUCTIONS, a limited partnership, successors in interest to the plaintiff Samuel Goldwyn Productions, Inc.,

Respondents.

APPENDIX C TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Of Counsel

May 20, 1964

INDEX TO APPENDIX C

	PAGE
Complaint, *Samuel Goldwyn Productions, Inc.* v. *Fox West Coast Theatre Corporations, et al.*	1c
Notice of Motion and Motion for Partial Summary Judgment	20c
Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment	22c
Petition in *United States* v. *Paramount*	47c
Amended Complaint in *United States* v. *Paramount*	158c
Answer to Petition of United Artists Defendants	240c
Answer to Amended Complaint of United Artists Corporation	254c
Government's Bill of Particulars in *United States* v. *Paramount*	258c
Substituted Interrogatories to the Government in *United States* v. *Paramount*	291c
Government's Answers to Substituted Interrogatories	300c
Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, *United States* v. *Paramount*)	345c
Agreement United Artists and Warner Bros. Circuit Management Corporation (Government Exhibit 382, *United States* v. *Paramount*)	372c
Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in *United States* v. *Paramount*)	377c

PAGE

Interrogatory Answers by United Artists Corporation in *United States* v. *Paramount* (Government Exhibit 142, *United States* v. *Paramount*) 452c

RKO Answers to Interrogatories in *United States* v. *Paramount* (Government Exhibit 93, *United States* v. *Paramount*) 482c

Plaintiff's Schedule No. 1 in Opposition to Motion for Summary Judgment 488c

Plaintiff's Schedule No. 2 in Opposition to Motion for Summary Judgment 492c

Affidavit of Maxwell Keith in Opposition to Motion for Summary Judgment 497c

Affidavit of James A. Mulvey in Opposition to Motion for Summary Judgment 512c

Statement of Fact Regarding Distribution of Goldwyn Pictures 522c

Affidavit of George Slaff in Opposition to Motion for Summary Judgment 530c

Complaint. *Samuel Goldwyn Productions, Inc.* v. *Fox West Coast Theatre Corporations, et al.*

JOSEPH L. ALIOTO
111 Sutter Street
San Francisco, California
Douglas 2-3616

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No. 29756

SAMUEL GOLDWYN PRODUCTIONS, INC.,

Plaintiff,

v.

FOX WEST COAST THEATRES CORPORATION, FOX WEST COAST AGENCY CORPORATION, TWENTIETH CENTURY FOX FILM CORPORATION, NATIONAL THEATRES, INC., GOLDEN STATES THEATRE & REALTY CORP., UNITED CALIFORNIA THEATRES, INC., T & D JR. ENTERPRISES, INC., SAN FRANCISCO THEATRES, INC., EXCELSIOR AMUSEMENT CO., INC., CHARLES P. SKOURAS, R. A. McNEIL and MICHAEL A. NAIFY,

Defendants.

Plaintiff brings this action against defendants and for claim of relief alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the above-named defendants under sections 15 and 26 of Title 15, U. S. C. A., being part of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraint and Monopolies", as amended, commonly known as the Sherman Act and the Clayton Act. The purpose of this action is to recover damages against the above-named defendants for injuring plaintiff in its business of producing and distributing motion pictures, which injury resulted from defendants' violations of the antitrust laws of the United States; and to restrain and enjoin the defendants from continuing the illegal monopoly and the combination, conspiracies and contracts in restraint of plaintiff's trade and commerce as hereinafter alleged.

2. The business of producing, distributing and exhibiting motion pictures involves a constant, continuous stream of trade and commerce between the states of the United States consisting of the solicitation and the making of contracts for the future delivery over periods of time of films to be produced and delivered; the transportation of negative films from the studios to the laboratories where positive prints of the motion picture films are prepared, and from there shipped to film exchanges throughout the United States; the continuous distribution of said films from the exchanges to and from motion picture theatres located in

the areas served by the respective exchanges; the interchange of said films between each exchange and other exchanges of the same distributor located in other states of the United States; and finally the shipment of said films from the exchanges throughout the United States to points within the State of New York or elsewhere for scrapping. The plaintiff and all the defendants are directly engaged in trade and commerce among the various states, and the practices hereinafter mentioned operated directly upon the above-described course of interstate business.

3. Each of the corporate defendants maintains an office and transacts business within the above-entitled district and division.

II

DESCRIPTIONS OF THE PARTIES

4. Samuel Goldwyn Productions, Inc. (hereinafter designated as Goldwyn Productions) is a corporation organized and existing under and by virtue of the laws of the State of California with offices and principal place of business in Hollywood, California and in New York City, New York. The producer associated with the said plaintiff is Mr. Samuel Goldwyn.

5. Fox West Coast Theatres Corporation (hereinafter designated as Fox West Coast), a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business in Los Angeles, California, is hereby made a

defendant. It is engaged in the management and control of theatres exhibiting motion pictures in the States of California, Arizona, Montana and Nevada.

6. National Theatres, Inc. (hereinafter designated as National), a corporation organized and existing under and by virtue of the laws of the State of Delaware, is hereby made a defendant herein. National operates theatres in the middle and far western states of the United States through numerous subsidiary operating corporations. Defendant Fox West Coast is wholly owned and controlled by National.

7. Fox West Coast Agency Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware, is hereby made a defendant. It is a wholly owned subsidiary of Fox West Coast and is engaged in the business of buying and booking motion picture films for those theatres which are operated directly or indirectly by Fox West Coast.

8. Twentieth Century Fox Film Corporation (hereinafter designated as Twentieth Century Fox) is hereby made a defendant herein. It is the parent Fox company, organized under the laws of the State of New York with its offices and principal place of business in New York City, New York. National is wholly owned and controlled by Twentieth Century Fox.

9. The following corporations, described as below, are hereby made defendants herein:

Name	State of Incorp.	Prin. Place of Bus.
Golden State Theatre & Realty Corp.	California	San Francisco, Calif.
United California Theatres, Inc.	"	" " "
T & D Jr. Enterprises, Inc.	"	" " "
San Francisco Theatres, Inc.	"	" " "
Excelsior Amusement Co., Inc.	"	" " "

Each of these corporations is engaged in the business of exhibiting motion pictures. These corporations shall sometimes be referred to herein as the Naify-McNeil circuit.

10. Charles P. Skouras, a resident of Los Angeles, California, and R. A. McNeil and Michael A. Naify, residents of San Francisco, California, are made defendants herein. The operation of the theatres and enterprises of Fox West Coast, its subsidiaries and affiliated firms has been under the management, direction and control of the said Charles P. Skouras by virtue of an agreement between National and Charles P. Skouras dated December 28, 1940, as amended and modified. Fox West Coast, through stock interests, the activities of the defendants Skouras, McNeil, and Naify and through combinations for collusive action, has, as hereinafter alleged, dominated, managed, directed, dictated and controlled the film buying schemes of the corporations listed in paragraph 9 hereof as well as their subsidiary and affiliated firms.

III

THE BUYING COMBINE

11. Fox West Coast operates a circuit of almost 250 theatres located in California and Arizona. In the area served by the six motion picture exchanges located at Los Angeles, San Francisco, Portland, Seattle, Denver and Salt Lake City, Fox West Coast, together with other subsidiaries of National, operates a total of 345 theatres. The defendants listed in paragraph 9 above operate in excess of 100 theatres in Northern California and Nevada, and, principally through the activity of Charles P. Skouras, have engaged in collusive agreements with the Fox West Coast circuit for the purchase of film licenses. The defendants have combined the tremendous buying power arising out of the control of the theatres to purchase film licenses on a non-competitive and monopolistic basis as hereinafter more fully set forth.

12. In August of 1925, the parent Fox company acquired approximately one-third of the common stock of West Coast Theatres, Inc., predecessor of the defendant Fox West Coast, and in March, 1928, it purchased all of the stock of Wesco Corporation (now the defendant National), a holding company for theatre operating corporations. From this nucleus Fox West Coast and National erected the buying combine of operating companies by the predatory means and methods hereinafter alleged.

13. By purchase and construction of theatres, by contracts with competitors eliminating competition, by making

partnerships with competitors, by booking for theatres in which it had no interests, Fox West Coast acquired monopolistic domination of the motion picture theatre field in California. In Southern California, Fox West Coast has the monopoly largely to itself. In Northern California the domination is shared with the Naify-McNeil Circuit. The Naify-McNeil Circuit has pursued a monopolistic acquisition policy similar to that of Fox West Coast. Fox West Coast and the Naify-McNeil Circuit have cooperated in acquiring theatres and have common theatre interests through stockholdings and through some of the officers and stockholders of the corporations listed in paragraph 9 hereof. Within the last three years all of the defendants have cooperated to prevent a strong potential competitor outside their groups from obtaining an extensive interest in the Naify-McNeil Circuit.

14. By threatening to boycott motion picture producers and/or distributors, by tying in all of their theatres on negotiations for film licenses, by threatening not to show pictures in any of their theatres unless their terms were complied with and by influencing certain of their competitors to cooperate with them by refusing to bid on pictures, the defendants, led by Charles P. Skouras and Fox West Coast, have influenced, coerced and compelled motion picture producers and/or distributors to sell them pictures at lower prices than would otherwise have been obtained.

15. The defendants' buying combine and their collusive practices regarding the negotiations for and the leasing of motion picture films, and their common interests and arrangements with the five major producing-distributing-

exhibiting motion picture companies (through the parent Fox company) have resulted in the acquisition by them of monopolistic buying power which they have used to exert unlawful influence over the business of leasing motion pictures for exhibition in the territories in which they operate theatres. This monopolistic buying power has permitted them to deny to producers, including the plaintiff herein, a satisfactory market within the said territories.

IV

THE COMBINATION, CONSPIRACY AND MONOPOLY

16. The defendants, and others acting in concert with them, commencing in or about 1925 and continuing up to and including the date of the filing of this complaint, have violated and are now violating Sections 1 and 2 of the Sherman Act by unlawfully contracting, combining, conspiring to monopolize, monopolizing and attempting to monopolize, and by unlawfully contracting, combining, and conspiring to restrain trade and commerce among the several states in the licensing and exhibition of motion pictures; and more particularly by:

a. Agreeing to acquire and maintain, and acquiring and maintaining a monopolistic combine of first and subsequent run theatres for the exhibition of motion pictures;

b. Agreeing to eliminate and eliminating competition in the purchase of film licenses;

c. Agreeing to control and restrain, and controling and restraining negotiations for the terms and conditions for licensing the exhibition of motion pictures;

d. Agreeing to allocate and allocating motion picture product among themselves on a non-competitive basis;

e. Agreeing to operate and maintain, and operating and maintaining, a rigid uniform and non-competitive system in the booking and playing of motion pictures; and

f. Agreeing to establish, fix, decrease, stabilize and depreciate, and actually establishing, fixing, decreasing, stabilizing and depreciating the film rental to be paid producers for the exhibition of motion pictures.

17. The said unlawful conspiracy to monopolize, attempts to monopolize, contracts, combinations and conspiracies in restraint of trade and commerce, and monopoly in the licensing and exhibition of motion pictures moving in interstate commerce have consisted and do consist of a continuing agreement and concert of action among defendants, the substantial terms of which agreement and means of said concert of action being as follows:

a. That defendants by their predatory tactics, hereinafter mentioned, establish, increase, maintain and perpetuate a monopolistic buying combine of motion picture theatres;

b. That they use the monopolistic buying power thus acquired to negotiate for film licenses on a collective basis;

c. That, by use of the said monopolistic buying power, they depreciate film rental paid to producers.

18. During the period of time covered by this complaint, and for the purpose of forming and effectuating the

aforesaid combination, conspiracy, contracts and monopoly in restraint of trade, the defendants, by agreement and concert of action, have done the things which, as hereinbefore alleged, they conspired and agreed to do, and more particularly among others during the period covered by this complaint have done the following things:

a. They acquired an effective monopolistic buying combine by the acquisition, leasing, ownership or management of theatres strategically located throughout the states in which the defendants do business.

b. They secured their backbone product as a result of monopolistic cross-licensing with the major distributors who also produced and exhibited motion pictures; namely, Paramount, Warner's, Loew's and RKO, these cross-licensing agreements being secured for the defendants through the instrumentality of the parent Fox corporation, Twentieth Century Fox.

c. They have made master agreements and franchises with the said major producing-distributing-exhibiting companies through the parent Fox company which left them free to deal arbitrarily with independent productions such as those of the plaintiff.

d. They employed a system of price control which operated by virtue of express or implied agreements between them and the five major producing-distributing-exhibiting companies as to clearance, terms and other conditions of licensing.

e. They made restrictive agreements with each other and with the five producing-distributing-exhibiting com-

panies for the purpose and with the effect of enabling them to deal independently, arbitrarily and on a non-competitive basis in their negotiations for the production of the plaintiff.

f. They arbitrarily excluded independent theatres from competition with their own theatres.

g. They imposed discriminatory terms upon non-theatre-owning distributors through which plaintiff distributed its product.

h. They made operating agreements or leases between themselves and one or more of the producing-distributing-exhibiting companies covering, among others, the cities of Los Angeles and San Francisco.

i. They utilized their entire circuit buying power to:

(1) Negotiate films for all of their distributors;

(2) Exert pressure on distributors to obtain preferences;

(3) Combine their closed and open towns in negotiations for film in order to dictate, control and regulate the terms of film licenses;

(4) Buy film for theatres in which they had no financial interest, but as respects most of which they had options to purchase or profit-sharing arrangements from the operation thereof;

(5) Perform buying and booking services under so-called pooling agreements for groups of theatres in which they and others were interested;

(6) Deprive competitors of first and second run pictures;

(7) Secure unreasonable clearances;

(8) Obtain long term agreements for the rental of film which gave them preferences not given to independent operators;

(9) Fix, regulate, depreciate and depress the rental to be paid distributors for the licensing of film;

(10) Dictate the terms and conditions to be inserted in film licenses;

(11) Make it economically impractical for distributors of film to deal with theatres operated by persons other than defendants; and

(12) Stifle competition for licensing of films by denying competitors access to the market.

j. They acquired their monopolistic combine by means of the following methods among others:

(1) They forced or attempted to force competitors out of business;

(2) They bought out active competitors;

(3) Where competitors did not sell out to defendants, they threatened to build, or did build, competing theatres;

(4) They engaged in selective cutting of admission prices for the purpose of eliminating competitors;

(5) They obtained from competitors whom they bought out, or forced out of business, agreements not

to compete for long terms of years, which agreements at times extended to towns other than that in which the theatre was located;

(6) They made partnerships and pools with competitors;

(7) They made contracts with competitors eliminating competition; and

(8) They secured more product than was needed by them for the purpose and with the effect of securing control of competitors.

V

EFFECT OF GOVERNMENT'S MAJOR MOTION PICTURE CASE

20. Under the provisions of Section 16 of Title 15, U. S. C. A., a final judgment rendered in a suit brought by the United States to the effect that a defendant has violated the antitrust laws shall be *prima facie* evidence against such defendant in any suit brought by any other party against such defendant under said laws as to all matters respecting which the said judgment would be an estoppel as between the parties thereto.

21. On July 20, 1938, the United States of America filed a complaint in the District Court of the United States for the Southern District of New York against Twentieth Century Fox and National, among others, charging violations of the antitrust laws. (*United States* v. *Paramount Pictures et al.*, Civil Action No. 87-273). On November 14, 1940, an amended and supplemental complaint was filed against the same defendants. Before trial, negotiations for

settlement resulted in the entry of a consent decree, reserving to the United States the right at the end of a three-year trial period to seek the relief prayed for in the amended complaint. At the end of the three-year period, the United States moved for trial against all defendants. The District Court, after trial, found that defendants had violated Sections 1 and 2 of the Sherman Act.

22. On May 3, 1948, the Supreme Court of the United States affirmed the judgment of the District Court that defendants had violated Sections 1 and 2 of the Sherman Act. This judgment in favor of the United States would be an estoppel between the parties thereto as to the monopoly, conspiracies, combination and contracts pleaded in this complaint by plaintiffs herein.

23. On February 8, 1950, the United States District Court for the Southern District of New York entered a final decree against Twentieth Century Fox and National prohibiting, among other things, the buying or leasing of films on a circuit basis and the pooling of management or licenses; and directing that Twentieth Century Fox divorce its production and distribution business from its exhibition business.

VI

EFFECTS OF COMBINATION, CONSPIRACY AND MONOPOLY

24. By means of the conduct aforesaid, defendants have fixed, maintained, controlled and regulated the prices, terms and conditions of film licenses; they have suppressed

competition and have monopolized the licensing and exhibition of motion pictures to such an extent that they have acquired actual and effective domination of negotiations for film licenses for exhibition in their theatres; they have used that domination and control for the purpose and with the effect of discriminating against the pictures of plaintiff to depreciate their value and to diminish the income and profits which would have resulted to plaintiff but for the violations of Sections 1 and 2 of the Sherman Act as aforesaid.

25. The defendants have persisted in maintaining their buying combine, and have continued and do continue such acts and conduct and continue to maintain such monopolistic control and to exert such restraints of said trade and continue to fix, maintain and control the prices, terms and conditions upon which motion pictures are licensed for exhibition in their theatres.

26. One of the effects of the monopolistic practices herein complained of, as intended by the defendants, was and is injury to the business of plaintiff and its predecessors. Plaintiff was and is directly injured in its business by reason of the violations heretofore alleged in that it lost and is losing profits it would otherwise have gained. The value of its motion pictures and those of its predecessors was and is depreciated. The fees paid under the licenses were and are lessened. The good will attaching to its company and to its pictures was and is substantially injured and impaired, and the value of plaintiff's company and plaintiff's pictures was and is consequently diminished.

27. The plaintiff herein or its predecessors in interest have, during the period of the conspiracy, produced the following motion pictures:

Woman Chases Man
Stella Dallas
Dead End
Hurricane
Goldwyn Follies
Marco Polo
Cowboy and Lady
Wuthering Heights
They Shall Have Music
Real Glory
Raffles
The Westerner
The Little Foxes
Pride of the Yankees
They Got Me Covered
Up In Arms
Princess and the Pirate
The Wonder Man
The Kid From Brooklyn
The Best Years of Our Lives
The Secret of Walter Mitty
The Bishop's Wife
Enchantment
Roseanna McCoy
My Foolish Heart
Pride of the Yankees (reissue)
A Song Is Born
Ball of Fire

These pictures have been licensed under the monopoly and conspiracy heretofore alleged. The license fees received for them were substantially lower than the fees that would have been received in a competitive market.

WHEREFORE plaintiff prays:

1. That summons issue to each of the defendants, commanding it or him to appear herein and to answer the allegations contained in this complaint, and to abide by and

perform such orders and decrees as the Court may make in the premises;

2. That plaintiff receive with interest the sum of Two Million Two Hundred Fifty Thousand Dollars ($2,250,000) as damages, and that the said sum be trebled to Six Million Seven Hundred Fifty Thousand Dollars ($6,750,000) in accordance with Section 4 of the Clayton Act (15 U. S. C. A. 15);

3. That the aforesaid combination and conspiracy, contracts, agreements, arrangements, and understandings in restraint of interstate trade and commerce, conspiracy to monopolize, attempts to monopolize and monopolization of interstate trade and commerce be adjudged and decreed to be unlawful, and that the contracts, agreements, arrangements, understandings and practices alleged in this complaint be adjudged and decreed to be in violation of Sections 1 and 2 of the Sherman Act;

4. That the Court adjudge and decree that the defendants have combined and conspired to restrain unreasonably and have conspired to monopolize, attempted to monopolize and have monopolized the interstate trade and commerce in the licensing and exhibition of motion pictures in violation of Sections 1 and 2 of the Sherman Act;

5. That defendants and any of their subsidiaries or affiliated companies, their officers, directors, agents and employees and their respective successors, assignees or transferees be enjoined from agreeing, combining, conspiring or

contracting with each other or with any other person or corporation whatsoever to restrain, control or eliminate competition among themselves or with others, from restricting in any way and from agreeing on the prices, terms or conditions in the licensing and exhibition of motion pictures;

6. That the Fox defendants be adjudged to be *per se* an unlawful combination in restraint of trade;

7. That the Court appoint a receiver to sell such of the theatres owned, operated or controlled by defendants as it shall deem necessary to dissipate the monopolistic buying combine herein alleged; that the Court order the said receiver to file in this Court for the Court's approval within 90 days after this cause shall be finally adjudicated, and a decree entered, a plan or plans for the disposition of the above-mentioned theatres, with notice to the plaintiff and an opportunity to be heard thereon; that the sale of such theatres be made to persons, firms or corporations which have no relationship in any way to any of the defendants by way of stock ownership, bond ownership, partnership or by any other means, direct or indirect;

8. That the Court issue a preliminary injunction prohibiting the defendants, and each of them, and their officers, directors, agents and employees from the fixing by concert of action the prices, terms, conditions and the manner in which motion pictures shall be licensed and exhibited, and prohibiting the maintenance of the aforesaid combination, conspiracy, monopoly and attempt to monopolize in restraint of the licensing and exhibition of motion pictures;

9. That the Court grant a reasonable attorney's fee to the plaintiff herein, as provided for in Section 4 of the Clayton Act (15 U. S. C. A. 15);

10. That the Court grant plaintiff its costs;

11. That the plaintiff shall have such other and further relief as the Court shall deem just and proper.

/s/ JOSEPH L. ALIOTO
Joseph L. Alioto
Attorney for Plaintiff

Notice of Motion and Motion for Partial Summary Judgment

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IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 29756

SAMUEL GOLDWYN PRODUCTIONS, INC.,
Plaintiff,

v.

FOX WEST COAST THEATRES CORPORATION, *et al.*,
Defendants.

NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

To Plaintiff and Its Attorneys of Record:

NOTICE IS HEREBY GIVEN that defendants, Fox West Coast Theatres Corporation, Fox West Coast Agency Corporation, National Theatres Corporation and Twentieth

Notice of Motion and Motion for Partial Summary Judgment

Century-Fox Film Corporation, will move the above entitled Court, in the Courtroom of the Honorable Edward P. Murphy, in the United States Post Office Building, Seventh and Mission Streets, San Francisco, California, on July 19, 1956, at 9:30 A.M., or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure, for partial summary judgment dismissing all claims, if any, of the plaintiff which accrued prior to May 16, 1947, on the ground that such claims are barred by the applicable statute of limitations.

Said motion will be based upon the papers, files and pleadings in this action, the affidavit of John F. Caskey, served and filed herewith, and this notice of motion.

Dated: July 13, 1956.

KENNETH C. ROYALL
FREDERICK W. R. PRIDE
ARTHUR B. DUNNE
EDWARD D. KEIL

By ARTHUR B. DUNNE
Attorneys for Moving Defendants

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Civil Action No. 29756

SAMUEL GOLDWYN PRODUCTIONS, INC.,

Plaintiff,

—against—

FOX WEST COAST THEATRES CORPORATION, *et al.*,

Defendants.

AFFIDAVIT OF JOHN F. CASKEY IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

STATE OF TEXAS,
COUNTY OF DALLAS. } ss.:

JOHN F. CASKEY, being duly sworn, deposes and says:

1. I am an attorney-at-law, a member of the bar of the State of New York and a member of the firm of Dwight, Royall, Harris, Koegel & Caskey, of New York, N. Y. This affidavit is submitted in support of defendants' motion for partial summary judgment dismissing all claims which accrued more than three years prior to the commence-

ment of this action as barred by the California statute of limitations.

2. My firm is and, for many years, has been counsel for Twentieth Century-Fox Film Corporation (hereinafter referred to as "Twentieth Century-Fox") and National Theatres Corporation (hereinafter referred to as "National"). My firm represented those companies throughout the proceedings in the anti-trust case entitled *United States* v. *Paramount Pictures Inc., et al.* (hereinafter referred to as the "*Paramount* case"), Equity No. 87-273 in the United States District Court for the Southern District of New York. I actively participated in all phases of that case from its filing in July, 1938, to its ultimate conclusion. I am familiar with the matters complained of by the United States as plaintiff in that case, the nature of the charges asserted, the amplification of those charges in pretrial proceedings, the evidence introduced during the trial and the opinions and findings of the courts before whom the case was tried and argued. I am also familiar with the allegations contained in the complaint in the case now before the Court and the claims asserted by the plaintiff here.

3. I am familiar with the contentions advanced by the defendants on this motion for partial summary judgment to the effect that under Section 5 of the Clayton Act the *Paramount* case did not toll the statute of limitations with respect to the claims asserted by Goldwyn in this case.

This affidavit will be directed to an identification of certain portions of the record in the *Paramount* case which bear upon the nature of the Government claims so far as they are pertinent to defendants' motion.

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

4. The nature of the *Paramount* case and the charges and claims made by the Government therein are shown in the original Petition and the Amended and Supplemental Complaint filed by the Government in that action and in the opinions of the courts reported in 66 F. Supp. 323; 334 U.S. 130; and 85 F. Supp. 831. The Government's Petition and Amended and Supplemental Complaint are on file in this Court as Exhibits A and B, respectively, to my affidavit of July 10, 1956. I respectfully refer the Court to those exhibits and incorporate them herein by reference as Exhibits A and B, respectively, to this affidavit.

5. In the trial of the case the Government called no live witnesses to testify as to any of the exclusionary results of the combination and conspiracy of which it had complained. It introduced in evidence only documents reflecting the trade practices which it charged were unlawful and a large mass of statistical evidence compiled on a nation-wide basis.

6. The answers filed by plaintiff in this case in response to defendants' requests for admissions (Responses to Defendants' First and Third Requests) admit that the pictures produced by Samuel Goldwyn were distributed through one of the defendants in the *Paramount* case (United Artists Corporation) during the period from 1937 to 1941 and through another defendant (RKO Radio Pictures, Inc.) in the period between 1941 and May, 1950 (the date of the institution of the action before this Court).

The Parties Defendant in the *Paramount* Case.

7. The defendants named in the original petition filed by the United States were the eight principal motion picture

producers and distributors in the United States, some of their affiliated and subsidiary companies and their officers and directors. These companies by their short titles were Paramount, Loew's, Warner Bros., RKO, Twentieth Century-Fox (and National), United Artists, Columbia and Universal.

Samuel Goldwyn was at that time a director and one of five equal stockholders of the defendant United Artists Corporation. Goldwyn personally was named a defendant and with respect to his connection with United Artists Corporation, the Government alleged in Paragraph 12 (b) of the petition:

> "Of the individual defendants, * * * and Samuel Goldwyn are Directors, of the said defendant United Artists Corporation. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the said parent corporation, United Artists Corporation."

Goldwyn remained a defendant in the *Paramount* case until April 6, 1939, when he was replaced by James Roosevelt, who was Goldwyn's nominee as a director of United Artists and who had replaced Goldwyn on the board of that defendant.

8. On November 14, 1940, the Government filed its amended and supplemental complaint. It was on this amended complaint that the case went to trial in the fall of 1945. In the Government's amended and supplemental complaint the same eight groups of companies were continued

as defendants, but the individual officers and directors of each were dropped as defendants.

9. The Government's amended complaint contained the following allegations:

> "84. United Artists now distributes pictures for the following producers among others: Samuel Goldwyn, Charles Chaplin, Mary Pickford, Alexander Korda, and London Film Productions, Ltd., Selznick International, Edward Small, Sol Lesser, Hal Roach, David Loew, Ernest Lubitsch, Walter Wanger, and Richard Rowland.
>
> "85. United Artists maintains exchanges in 26 cities.
>
> "86. The corporation is owned by five stockholders, Charles Chaplin, Samuel Goldwyn, Mary Pickford, the Estate of Douglas Fairbanks, and Alexander Korda. It issues no public statement of gross assets or business done but for the fiscal year ended in 1939 its gross income exceeded $10,000,000."

10. The Government in its pleadings defined certain of the terms used therein. In the original petition, there were the following definitions:

> "(59) *Producer.*—This term includes, without limitation, all persons, partnerships, associations and corporations who engage or contract to engage in the production of motion pictures.

"(60) *Major producer.*—A major producer is one of the eight parent companies defendant herein. Strictly speaking, however, the defendant United Artists Corporation is a distributor rather than a producer.

"(61) *Independent producer.*—A producer who is not in any way affiliated with the major producers.

* * *

"(80) *Distributor.*—A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. The prints are usually licensed to the exhibitor. However, the arrangement is frequently referred to in the industry as a sale.

"(81) *Major Distributor.*—A distributor who is one of the eight parent companies defendants herein.

"(82) *Independent Distributor.*—A distributor who is not in any way affiliated with the major distributors."

In no other portion of the original petition were these definitions changed, enlarged upon or amended.

11. In the Government's amended complaint there were the following definitions:

"15. (a) *Producer.*—Any person, partnership, association or corporation engaged in the production of motion pictures.

"(b) *Major Producer.*—One which produces motion pictures for release by a major distributor pursuant to a prior understanding or agreement with such major distributor.

"(c) *Independent Producer.*—One which is not a major producer.

* * *

"16. (a) *Distributor.*—Any person, partnership, association or corporation engaged in the business of licensing motion pictures for exhibition and distributing the positive prints of such motion pictures to exhibitors.

"(b) *Major Distributor.*—A distributor which is a defendant herein or is controlled by a defendant herein.

"(c) *Independent Distributor.*—One which is not a major distributor."

In no other portion of the amended complaint were these definitions changed, enlarged upon or amended. In no portion of the amended complaint was Goldwyn or any other producer whose pictures were distributed through a defendant referred to as an "independent".

The Answer Filed by the United Artists Defendants in the *Paramount* Case.

12. Samuel Goldwyn was served as a defendant in the *Paramount* case. He appeared and was represented by counsel. Prior to the time that the defendants were required to file answers to the Government's petition, James Roosevelt was substituted as a party defendant in lieu of Goldwyn.

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

13. On August 8, 1939, an answer was filed on behalf of United Artists Corporation, James Roosevelt and others who were referred to therein as the "United Artists defendants." There is on file in this Court, marked Exhibit C to my affidavit of July 10, 1956, the answer of the United Artists defendants to the petition. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit C to this affidavit.

14. This answer contained averments respecting the following allegations contained in the Government's petition in the section entitled "VI. OFFENSES CHARGED". The first paragraph of that section reads as follows:

> "173. The defendants, each well knowing all the matters and things hereinbefore alleged, for many years last past have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the production, distribution, and exhibition of motion pictures, and unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the production, distribution and exhibition of motion pictures, together with the means and

instrumentalities by which they have been brought about and accomplished, will now be described in detail."

In Paragraph 41 of the answer of the United Artists defendants (Exhibit C referred to above) it is alleged that those defendants deny each and every allegation of the foregoing paragraph.

15. Paragraph 175 of the Government's petition reads as follows:

> "Through the instrumentality of their respective first-run theatre holdings as aforesaid, coupled with the monopolization of the production of quality, high-class feature films distributed by all of the defendants, as hereinafter alleged, the said producer-exhibitor defendants, or their predecessors in interest, have been empowered to exclude, and have excluded, from said first-run exhibition in said first-run motion pictures theatres all other producers of pictures and their product for many years past, commencing at least as long ago as 1927."

Paragraph 43 of the answer of the United Artists defendants reads as follows:

> "43. Defendants deny each and every allegation of Paragraph (175) of the petition."

16. Paragraph 186 of the Government's petition reads as follows:

> "186. In addition to the monopolization of the market for the exhibition of motion pictures in first-

> run metropolitan theatres, as herein before alleged, the producer-exhibitor defendants have also attempted to monopolize, have monopolized, and have combined and conspired with each other and with the producer-distributor defendants and with the distributor defendant to monopolize, the first- or preferred-run exhibition of motion pictures throughout the United States wherever any theatres affiliated with the producer-exhibitor defendants, or any one or more of them, operate or exist."

Paragraph 47 of the answer of the United Artists defendants denied those allegations.

17. With respect to the original petition filed by the Government, the answer of the United Artists defendants thereto either denied the charges contained in the petition or denied knowledge or information sufficient to form a belief.

18. As has been stated above, the Government filed an amended and supplemental complaint on November 14, 1940. None of the individual defendants named in the original petition was named as a defendant in the amended complaint. This complaint did include United Artists Corporation as a defendant. It contained allegations that United Artists was owned by Goldwyn and four other stockholders and that it distributed the Goldwyn pictures. The answer filed by United Artists admitted these allegations. There is on file in this Court, marked Exhibit D to my affidavit of July 10, 1956, the answer of United Artists Corporation to the amended complaint. I respectfully refer the

Court to that exhibit and incorporate it herein by reference as Exhibit D to this affidavit.

19. The claims asserted by the Government in its amended complaint were set forth in Section VII entitled "Offenses Charged." This is followed by a heading reading "A. Conspiracies to Unreasonably Restrain and Monopolize the Production, Distribution and Exhibition of Motion Pictures Participated In by *All* of the Distributor Defendants." The specific charges of the Government with respect to these conspiracies together with all charges respecting monopolization, exclusion and illegal contracts are contained in paragraphs numbered 142 through 187 (Exhibit B hereto).

In paragraph 13 of the answer of United Artists there is the averment:

> "13. Defendant denies each and every allegation of paragraphs 142, 143, 144, 145, 146, 147, 148, 149(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p); 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186 and 187 of plaintiff's amended and supplemental complaint."

Statements Filed by the United States in Pretrial Proceedings.

20. The defendants in the *Paramount* case at various times propounded numerous interrogatories to the Government with respect to the allegations contained in the petition.

All such separate interrogatories were consolidated on February 2, 1940, into one set of substituted interrogatories. Both United Artists and RKO served the substituted interrogatories. There are on file in this Court, marked Exhibit E to my affidavit of July 10, 1956, photostatic copies of portions of such substituted interrogatories. I respectfuly refer the Court to that exhibit and incorporate it herein by reference as Exhibit E to this affidavit.*

21. Interrogatory 1(b) inquired as to all documents relied upon by the Government to sustain the charge contained in Paragraph 174 of the Petition that certain defendants had attempted to monopolize and had monopolized the exhibition of motion pictures in first-run metropolitan theatres. The Government listed and described 540 exhibition licenses as containing facts relied upon by it. Among the documents so listed were a number which dealt with the licensing of Goldwyn pictures. There are on file in this Court, marked Exhibit G to my affidavit of July 10, 1956, photostatic copies of the portions of such interrogatory answers which pertain to Goldwyn pictures. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit G to this affidavit.

22. I identify below the agreements listed by the Government which are described as relating to the licensing of the Goldwyn productions in theatres affiliated with *Paramount* case defendants.

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*United Artists and the individual United Artists defendants also moved for a Bill of Particulars as to the charges in the Government's petition. There is on file in this Court, marked Exhibit F to my affidavit of July 10, 1956, a copy of this Bill of Particulars furnished by the Government. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit F to this affidavit.

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT

	Date of Contract	Distributor	Exhibitor	Period Covered
186.	1/17/39	United Artists Corp. (1 Samuel Goldwyn Production) * * *	Saenger Theatres, Inc.	1938-39 Season
194.	12/ 1/38	United Artists Corp. (2 Samuel Goldwyn Productions) * * *	Interstate Circuit, Inc.	1938-39 Season
211.	12/22/38	United Artists Corp. (4 Samuel Goldwyn Productions) * * *	Minnesota Amusement Co.	1938-39 Season
223.	12/22/38	United Artists Corp. (4 Samuel Goldwyn Productions) * * *	Minnesota Amusement Co.	1938-39 Season
229.	10/22/38	United Artists Corp. (4 Samuel Goldwyn Productions) * * *	Tri-States Theatre Corp.	1938-39 Season
235.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season

UNITED ARTISTS CONTRACTS WITH WARNER BROS. THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
480.	10/24/38	United Artists Corp. Covers exhibition of Samuel Goldwyn production in the Warner circuit.	Warner Bros.	1938-39 Season

UNITED ARTISTS CONTRACTS WITH FOX THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
537.	4/11/39	United Artists Corp. Covers move over exhibition of one Samuel Goldwyn production.	Fox West Coast Theatres	1938-39 Season

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

23. Interrogatory 2(b) inquired as to the Government's charges contained in Paragraph 174 of the petition that certain defendants had combined with each other and with the producer-distributor defendants and with the distributor defendant (United Artists) to monopolize the market for the exhibition of motion pictures in certain theatres. In its answer the Government incorporated by reference its answer to Interrogatory 1(b). (Exhibit G which has been identified above)

24. Interrogatory 8 inquired as to charges which were contained in Paragraphs 186 and 190 of the petition that certain defendants had attempted to monopolize and had monopolized first or preferred run exhibition of motion pictures throughout the United States wherever any theatres affiliated with any one or more of the defendants operated or existed. The Government's answer to this interrogatory incorporated again by reference its answer to Interrogatory 1(b) (Exhibit G which is identified above) and listed 500 additional documents which it claimed supported its charge. Among the documents so listed were many which related to Goldwyn pictures. There are on file in this Court, marked Exhibit H to my affidavit of July 10, 1956, photostatic copies of the portions of the Government's answers which pertain to the Goldwyn pictures. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit H to this affidavit. I identify below the agreements listed by the Government which are described as relating to the licensing of Goldwyn productions in theatres affiliated with *Paramount* case defendants.

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT

	Date of Contract	Distributor	Exhibitor	Period Covered
314.	12/ 1/38	United Artists Corp. (3 Samuel Goldwyn Productions)	Texas Consolidated Theatres, Inc.	1938-39 Season
315.	12/ 2/38	United Artists Corp. (3 Samuel Goldwyn Productions)	Texas Consolidated Theatres, Inc.	1938-39 Season
330.	12/31/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Jefferson Amusement Co.	1938-39 Season
336.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
342.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
348.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
354.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season
360.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Paramor Theatre Co.	1938-39 Season
366.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Menmar Theatre Co.	1938-39 Season
372.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 Season

Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment

WITH RKO THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
483.	1/16/39	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 Season
488.	9/13/38	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 Season
494.	9/13/38	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 Season

25. Defendants' Interrogatory 9 inquired as to the charge contained in Paragraphs 186 to 190 of the Government petition that certain defendants had combined and conspired with each other and with the producer-distributor defendants and with the distributor defendant (United Artists) to monopolize the first or preferred run exhibition of motion pictures throughout the United States wherever any theatre affiliated with one of the defendants operated or existed. In its answer to this interrogatory, the Government incorporated by reference its answers to Interrogatories 1(b) and 8(b), referred to and identified above, as containing the documentary evidence upon which it intended to rely. There is on file in this Court, marked Exhibit I to my affidavit of July 10, 1956, a photostatic copy of the Government's answer to this interrogatory. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit I to this affidavit.

26. Interrogatory 6 inquired as to the charge contained in Paragraph 182 of the Government petition that the de-

fendants made their pictures available for exhibition in first-run theatres of the defendants to the exclusion of the motion pictures of all other producers. The Government's answer incorporated its anwers to Interrogatories 1(b) and 8(b) which are identified above. There is on file in this Court, marked Exhibit J to my affidavit of July 10, 1956, a photostatic copy of the Government's answer to this interrogatory. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit J to this affidavit.

27. Interrogatory 7 inquired as to the charges contained in Paragraphs 120, 121 and 183 of the Government's petition that certain defendants had dominated, controlled and monopolized the market for the exhibition of motion pictures in first-run metropolitan theatres throughout the United States and that the incentive to "independent" production had been decreased by reason of the inability of "independent" producers to gain access to that market. In answer, the Government again incorporated by reference its answers to Interrogatories 1(b) and 8(c) which are identified above. There is on file in this Court, marked Exhibit K to my affidavit of July 10, 1956, a photostatic copy of the Government's answer to this interrogatory. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit K to this affidavit.

28. Interrogatories 3 and 4 inquired as to charges that independent producers had been excluded from defendants' theatres and had attempted to license pictures to defendants' theatres and been refused. Respecting the identity of the producers whom the Government claimed had been so ex-

cluded, the Government answers listed the names and addresses of twenty-two persons. Goldwyn's name was not listed. There is on file in this Court, marked Exhibit L to my affidavit of July 10, 1956, a photostatic copy of the Government's answer to these interrogatories. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit L to this affidavit.

Later, the Government filed additional answers to these interrogatories. It set forth additional names of individuals engaged in some phase of the production or distribution business whom it claimed had been affected, together with a statement of the testimony which it asserted would be elicited from these individuals if called as witnesses. Goldwyn was not listed. There is on file in this Court, marked Exhibit M to my affidavit of July 10, 1956, a photostatic copy of such additional answer to these interrogatories. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit M to this affidavit. In no other answers by the Government to defendant's interrogatories was Goldwyn listed as one whom the Government claimed had been excluded from access to the defendants' theatres.

The Evidence Introduced by the Government upon the Trial of the *Paramount* Case.

29. The trial of the *Paramount* case began on October 8, 1945 before a three-judge Expediting Court. Certain of the exhibits offered by the Government at the trial in support of its case related to Goldwyn pictures. These covered both the period when those pictures were being distributed

through United Artists and the period when they were being distributed by RKO.

30. One of the trade practices which the Government asserted was illegal was the licensing of pictures to a circuit of theatres under a so-called "Master Agreement." The Government asserted that such agreements had exclusionary effects upon competing exhibitors and also that they had been used as a part of the price-fixing conspiracy. In support of these assertions the Government introduced Exhibits 199 and 382. There are on file in this Court, marked Exhibits N and O to my affidavit of July 10, 1956, photostatic copies of these Government exhibits. I respectfully refer the Court to those exhibits and incorporate them herein by reference as Exhibits N and O to this affidavit.

31. Government Exhibit 199 was a Master Agreement between United Artists as a distributor and various subsidiaries of National Theatres Corporation. That agreement covered four Samuel Goldwyn productions among others—all four of which are pictures which are involved in the case now before this Court. They were: THE LADY AND THE COWBOY, THE DARING AGE (released as THEY SHALL HAVE MUSIC), WUTHERING HEIGHTS and THE LAST FRONTIER (released as THE REAL GLORY).

The Expediting Court in its opinion in the *Paramount* case specifically referred to this Exhibit 199 as "evidence" of the conspiracy and quoted from the exhibit. The references by the court are set forth at pages 338, 345 and 352 of 66 F. Supp.

32. Government Exhibit 382 (Exhibit O hereto) was a Master Agreement between United Artists and Warner

Bros. Circuit Management Corporation for the 1936-37 motion picture season.

This exhibit relates to the licensing of five Goldwyn pictures for exhibition in the Warner circuit of theatres. As to the Goldwyn pictures included in the agreement there was the following statement:

"Five (5) Goldwyn Productions as follows:

DODSWORTH
COME AND GET IT
IN LOVE AND WAR
WOMEN CAN BE WRONG
SHAKE HANDS WITH MURDER

"Terms: 2 at 35%
3 at 30%"

This agreement was specifically referred to by the Expediting Court (66 F. Supp. 323, 352).

33. Another practice which the Government asserted was illegal was the so-called "formula deal." This was an arrangement whereby a circuit of theatres was licensed to exhibit a given picture for a rental measured by a specified percentage of the picture's national gross. Plaintiff has admitted in its responses to defendants' First and Third Requests for Admissions that during the period of time involved in the trial of the *Paramount* case at least seven of the Goldwyn pictures were licensed to subsidiaries of National Theatres, Inc. pursuant to formula deals negotiated by Goldwyn's distributor RKO and approved by Goldwyn or his representative. The Expediting Court

specifically referred to formula deals entered into by RKO (66 F. Supp. 323, 347).

34. Another trade practice which the Government asserted was illegal was the licensing of pictures pursuant to franchises. These were exhibition agreements covering pictures to be released during more than one motion picture season. The Government introduced Exhibit 195 as supporting its charges in this respect. There is on file in this Court, marked Exhibit P to my affidavit of July 10, 1956, a photostatic copy of this Government exhibit. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit P to this affidavit. This exhibit was a ten-year franchise between United Artists and Publix Theatres Corporation (Paramount), dated February 3, 1928. That franchise by its terms related to and included all pictures produced during that period by Samuel Goldwyn and other stockholders of United Artists. It appears on the face of the exhibit that this franchise was approved by Samuel Goldwyn individually and by Samuel Goldwyn, Inc. It contains the following:

> "Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the dis-

tribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule 'A' of said contract.

"Dated, February 4th, 1928.

SAMUEL GOLDWYN,
By /s/ Samuel Goldwyn (signed)

SAMUEL GOLDWYN, INC.,
By /s/ Samuel Goldwyn (sgnd)
Pres."

The above exhibit also was referred to by the Expediting Court (66 F. Supp. 323, 352).

35. The Government also introduced various exhibits relating to its claims of an alleged pattern of clearance, the importance of the first run market, the importance of affiliated theatres and the access which pictures distributed by the defendants had to such theatres. One such exhibit was the Government's Exhibit 142. There is on file in this Court, marked Exhibit Q to my affidavit of July 10, 1956, a photostatic copy of a portion of this exhibit. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit Q to this affidavit. That

exhibit purports to reflect the exhibition results of fourteen pictures distributed by United Artists during the 1936-37 season in New York City, Philadelphia, Atlanta and Kansas City. Three of the pictures, DODSWORTH, WOMAN CHASES MAN and BELOVED ENEMY were produced by Goldwyn.

As shown by this exhibit, in the four cities selected by the Government the Goldwyn pictures obtained greater film rental from the affiliated theatres than did the pictures of any other producer who distributed through United Artists. As shown by Exhibit 142, in Atlanta the Goldwyn pictures, DODSWORTH and BELOVED ENEMY, were the two pictures which received the highest film rentals there. The exhibit shows that in Philadelphia DODSWORTH earned film rental in excess of $30,000 from the affiliated Warner theatres, which was more than twice the film rental paid by Warners for the highest grossing non-Goldwyn picture listed on that exhibit. As shown by the exhibit, in New York City DODSWORTH was the only picture as to which the affiliated theatres paid film rental in excess of $60,000 and in Kansas City the pictures DODSWORTH and BELOVED ENEMY were the only pictures which earned film rental in excess of $3,000.

36. Government's Exhibit 93 consisted of certain of RKO's answers to the Government's interrogatories. RKO's answer to Interrogatory 2 related to the distribution by RKO of pictures during the 1943-44 season. There is on file in this Court, marked Exhibit R to my affidavit of July 10, 1956, a photostatic copy of a portion of this Government exhibit. I respectfully refer the Court to that exhibit and incorporate it herein by reference as Exhibit R

to this affidavit. The exhibit lists the seven RKO pictures which had the highest grosses during that season. They were as follows:

Picture	Billings	Total Rental
UP IN ARMS (Goldwyn)	10,149	$2,751,693
LADY TAKES A CHANCE (Ross)	13,987	1,955,781
TENDER COMRADE (RKO)	11,733	1,825,300
NORTH STAR (Goldwyn)	10,141	1,759,419
SHOW BUSINESS (RKO)	11,780	1,703,990
GOVERNMENT GIRL (RKO) ..	12,507	1,628,005
STEP LIVELY (RKO)	10,286	1,347,557

As shown by this Government exhibit, the film rental received by RKO for Goldwyn's picture UP IN ARMS was the highest of any picture released during that season and the fourth highest grossing picture was another Goldwyn production, NORTH STAR.

Other Aspects of the *Paramount* Case.

37. In Paragraph 170 of the amended complaint the Government charged that the defendant Fox and its subsidiaries constituted a separate combination and monopoly to prevent independent producers from competing with Fox and the other defendants in production. At the outset of the trial the Government conceded that it would not and could not press this charge and accordingly it was formally withdrawn. The abandonment of this charge was noted in the opinion of the Expediting Court (66 F. Supp. 323, 330).

38. In no pleadings or pretrial proceedings or in the course of the trial of the *Paramount* case did the Government make any claim, assertion or statement that one whose pictures were distributed by a defendant in that case was

excluded from the theatres operated by the *Paramount* case defendants, or was discriminated against in any way, or received inadequate film rentals for such pictures from the affiliated theatres. Nor were any such findings made by the Expediting Court.

39. There was no claim made by the Government in the pleadings in the *Paramount* case and no finding by the Expediting Court that any producer who distributed his pictures through one of the defendants in that case was forced or coerced to enter into such distribution arrangements with such defendant.

JOHN F. CASKEY
John F. Caskey

Sworn to before me
this 29th day of August, 1956

MARGIE MARTINDALE
Notary Public in and for the County
of Dallas, State of Texas.

Receipt of a copy of the within Affidavit is hereby admitted this 31 day of August 1956.

SULLIVAN, ROCHE, JOHNSON
& FARRAHER
Attorney for some defendants

Receipt of a copy of the within is hereby admitted this 31st day of August 1956.

JOSEPH L. ALCOTO
Attorney for Plaintiff

Petition in *United States* v. *Paramount*

Equity No. 87—273

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, PETITIONER

v.

PARAMOUNT PICTURES, INC., ET AL., DEFENDANTS

PETITION

LAMAR HARDY,
United States Attorney.

HOMER CUMMINGS,
Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

WENDELL BERGE,
JOHN J. ABT,
PAUL WILLIAMS,
J. STEPHEN DOYLE, JR.,
JOHN F. CLAGETT,
Special Assistants to the Attorney General.

Filed July 20, 1938

INDEX

PAGE

Parties defendant 51c
Parent companies 51c
Paramount 52c
Loew's 52c
R-K-O 52c
Warner Bros. 53c
Twentieth Century-Fox 53c
Columbia 54c
Universal 54c
United Artists 54c

I. Jurisdiction and Venue 55c

II. Description of Defendants 55c
Paramount 55c
Loew's 58c
R-K-O 60c
Warner Bros. 63c
Twentieth Century-Fox 65c
Columbia 68c
Universal 70c
United Artists 72c

III. History of the Motion Picture Industry 73c

IV. Description of the Industry 89c
(A) Branches of the Industry 89c
(1) Production 90c
(2) Distribution 94c
(3) Exhibition 98c

PAGE

(B) Competitive Conditions in the Industry 112c
(1) Exhibition in affiliated first-run metropolitan theatres 112c
(2) Exhibition in affiliated circuits ... 114c
(3) Affiliated theatre market comfortably filled by product of defendants, to exclusion of independent producers 116c
(4) Loaning of players 117c
(5) Marketing methods, overselling and overbuying 117c
(6) Refusal to sell second or other subsequent runs 119c
(7) Buyers' and sellers' markets in motion picture industry 119c

V. Interstate Commerce 120c

VI. Offenses Charged 124c
(A) Monopoly of exhibition in first-run metropolitan theatres 125c
(B) Nationwide monopoly of exhibition by producer-exhibitor defendants 129c
(C) Monopoly of production 135c
(1) Contract directors 136c
(2) Contract players 137c
(D) Trade practices imposed upon independent exhibitors 140c
(1) Block booking 141c
(2) Forcing of short subjects 142c
(3) Arbitrary designation of play dates 142c
(4) Protection 143c
(5) Overbuying 143c

PAGE

(6) Arbitrary, unconscionable and discriminatory film rentals 143c
(7) Prohibition of double features 145c
(8) Score charges 145c
(9) Minimum admissions 146c

(E) Benefits, favors and advantages extended by the defendants to each other 146c
(1) Sharing advertising costs 147c
(2) Optional contracts 147c
(3) Contract modifications 147c
(4) Overage and Underage 148c
(5) Cancellation of short subjects 149c
(6) Move-overs 149c

VII. Conclusion 149c

VIII. Prayer 152c

Petition in United States v. Paramount

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

IN EQUITY No. 87—273

UNITED STATES OF AMERICA,
Petitioner

v.

PARAMOUNT PICTURES, INC., *et al.*,
Defendants

PETITION

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, SITTING IN EQUITY.

The United States of America, by Lamar Hardy, United States Attorney for the Southern District of New York, acting under the direction of the Attorney General, brings this proceeding in equity against:

Paramount Pictures, Inc., Loew's, Incorporated; Irving Trust Company, New York, New York, Trustee in Bankruptcy for Radio-Keith-Orpheum Corporation; Warner Bros. Pictures, Inc.; Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Universal Corporation; and United Artists Corporation—hereinafter referred to as the parent companies; and the following named corporations and individuals to wit:

Paramount defendants

Subsidiary or associated corporations

Paramount News, Inc., Paramount Pictures Distributing Company, Inc.;

Individuals

Barney Balaban, Adolph Zukor, Neil F. Agnew, Y. Frank Freeman, Henry Herzbrun, John W. Hicks, Jr., Austin C. Keough, Walter B. Cokell, Stanton Griffis, Stephen Callaghan, Duncan G. Harris, John D. Hertz, Harry O. King, Charles A. McCulloch, Harvey D. Gibson, A. Conger Goodyear, Earl I. McClintock, Maurice Newton, Norman Collyer, Harold A. Fortington, Ernest V. Richards, Jr.;

Loew defendants

Subsidiary or associated corporations

Metro-Goldwyn-Mayer Corporation, Metro-Goldwyn-Mayer Distributing Corporation of Texas;

Individuals

Nicholas M. Schenck, Arthur M. Loew, J. Robert Rubin, Edward A. Schiller, Edgar J. Mannix, Al Lichtman, Sam Katz, David Bernstein, Leopold Friedman, Louis B. Mayer, William F. Rodgers, Isidore Frey, Charles C. Moskowitz, John R. Hazel, William A. Phillips, David Warfield, George N. Armsby, William A. Parker, Harry Rapf;

Radio-Keith-Orpheum defendants

Subsidiary or associated corporations

RKO Radio Pictures, Inc., Keith-Albee-Orpheum Corporation, Pathe News, Inc., The Van Beuren Corporation, RKO Proctor Corporation, RKO Midwest Corporation;

Individuals

Leo Spitz, Ned E. Depinet, William Mallard, William H. Clark, Jules Levy, George N. Armsby, Cornelius N.

Bliss, Maurice Goodman, James G. Harbord, Edward W. Harden, DeWitt Millhauser, David Sarnoff, Frederick Strauss, Lunsford P. Yandell, Courtland Smith, Merlin H. Aylesworth, Malcolm Kingsberg, Leon Goldberg;

Warner Bros. defendants

Subsidiary or associated corporations

Vitagraph, Inc., The Vitaphone Corporation, Warner Bros. Circuit Management Corporation;

Individuals

Harry M. Warner, Albert Warner, Jack L. Warner, Sam E. Morris, Herman Starr, Stanleigh P. Friedman, Robert W. Perkins, Joseph Bernhard, Gradwell L. Sears, Samuel Carlisle, Waddill Catchings, Charles S. Guggenheimer, Morris Wolf, S. Charles Einfield, W. Stewart McDonald;

Twentieth Century-Fox defendants

Subsidiary or associated corporations

Movietonews, Inc., Twentieth Century-Fox Corporation of Texas, Twentieth Century-Fox Distributing Corporation, National Theatres Corporation, The Chase National Bank of the City of New York;

Individuals

Joseph M. Schenck, Sidney R. Kent, William C. Michel, Darryl F. Zanuck, Felix A. Jenkins, Sidney Towell, William Goetz, H. Donald Campbell, John R. Dillon, William P. Philips, Herman G. Place, Seton Porter, Daniel O. Hastings, Truman H. Talley, Spyros P. Skouras, A. S. Gambee, H. C. Cox, John P. Edmondson, Herman Wobber;

Columbia defendants

Subsidiary or associated corporations

Columbia Pictures Corporation of California, Ltd., Screen Gems, Inc., Columbia Pictures of Louisiana, Inc., Columbia Pictures Distributing Company, Inc.;

Individuals

Harry Cohn, Jack Cohn, A. Schneider, Charles Schwartz, Abe Montague, Saul Bornstein, Jack Kerner, Leo M. Blancke, Mendel B. Silberberg, William S. Holman, Charles B. Mintz, George Winkler, Theodore J. Elias;

Universal defendants

Subsidiary or associated corporations

Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc.;

Individuals

J. Cheever Cowdin, Charles R. Rogers, Samuel Machnovitch, James P. Normanly, Nathan J. Blumberg, Peyton Gibson, Paul G. Brown, William Freiday, Daniel C. Collins, Ottavio Porchet, Adolph Ramish, Budd Rogers, Daniel M. Sheaffer, Willis H. Taylor, Jr., Matthew Fox, William A. Scully, Joseph H. Seidelman;

United Artists defendants

Individuals

Attilio H. Giannini, George J. Schaefer, Harry D. Buckley, Arthur W. Kelly, Lloyd Wright, Harry J. Muller, Mary Pickford, Douglas Fairbanks, Charles Chaplin, Dennis F. O'Brien, Edward C. Raftery, and Samuel Goldwyn,

defendants; and for its petition complains and alleges, upon information and belief, as follows:

I. Jurisdiction and Venue

(1) This petition is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", said Act being commonly known as the Sherman Anti-Trust Act, against the above-named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

(2) The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States and Territories of the United States and with foreign nations, have been and are conceived, carried out and made effective, in part, within the Southern District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants

(3) (a) Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broad-

way, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) Paramount News, Inc., a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 1501 Broadway, New York, New York, and is engaged in the production branch of the industry.

(c) Paramount Pictures Distributing Company, Inc., a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New Jersey, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

(d) The subsidiary or associated corporations of Paramount Pictures, Inc., engaged in the exhibition branch of the industry are so numerous and subject to such frequent changes that it is impracticable to name and describe them herein.

(e) Of the individual Paramount defendants, Barney Balaban is President and a Director, Adolph Zukor is a Director and Chairman of the Board of Directors, Neil F. Agnew and Y. Frank Freeman are Vice-Presidents and Directors, Henry Herzbrun and John W. Hicks, Jr., are Vice-Presidents, Austin C. Keough is Vice-President and Secretary, and Walter B. Cokell is Treasurer, of the said defendant Paramount Pictures, Inc. Stephen Callaghan, Duncan G. Harris, John D. Hertz, Harry O. King, Charles

A. McCulloch, Harold A. Fortington, Harvey D. Gibson, A. Conger Goodyear, Earl I. McClintock, Maurice Newton, Ernest V. Richards, Jr., and Stanton Griffis are Directors of said defendant Paramount Pictures, Inc. Norman Collyer is an Assistant Secretary of said parent company and of Paramount Pictures Distributing Company, Inc., and is also Secretary of Paramount News, Inc. As such officers and Directors, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Paramount Pictures, Inc., and the other corporate defendants referred to in this paragraph. Each of the officers named may be found at the principal place of business of Paramount Pictures, Inc., which is 1501 Broadway, New York, New York, except the said Adolph Zukor and the said Henry Herzbrun, each of whom may be found at 5451 Marathon Street, Hollywood, California, the said Stephen Callaghan, who may be found at 50 Broadway, New York, New York, the said Duncan G. Harris, who may be found at the offices of Brown, Wheelock, Harris & Company, 14 East 47th Street, New York, New York, the said John D. Hertz, who may be found at the offices of Lehman Brothers, No. 1 William Street, New York, New York, the said Harry O. King, who may be found at 405 Lexington Avenue, New York, New York, the said Charles A. McCulloch, who may be found at 33 North LaSalle Street, Chicago, Illinois, the said Harold A. Fortington, who may be found at the offices of Royal Indemnity Company, 150 William Street, New York, New York, the said Harvey D. Gibson, who may be found at the offices of Manufacturers Trust Company, 55 Broad Street, New York, New York, the said A. Conger Goodyear, who may be found at 570 Lexington Avenue, New York, New York, the said Earl I.

McClintock, who may be found at 170 Varick Street, New York, New York, the said Maurice Newton, who may be found at the offices of Hallgarten & Company, 44 Pine Street, New York. New York, the said Ernest V. Richards, Jr., who may be found at the offices of Saenger Theatres, Inc., Tudor Theatre Building, New Orleans, Louisiana, and the said Stanton Griffis, who may be found at the offices of Hemphill, Noyes & Company, 15 Broad Street, New York, New York.

(4) (a) Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) Metro-Goldwyn-Mayer Corporation, a wholly owned subsidiary of Loew's, Incorporated, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1540 Broadway, New York, New York, and is engaged in the production branch of the industry.

(c) Metro-Goldwyn-Mayer Distributing Corporation of Texas, a wholly owned subsidiary of Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Texas, with a place of business at 1540 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

(d) The subsidiary or associated corporations of Loew's, Incorporated, engaged in the exhibition branch of

the industry are so numerous and subject to such frequent changes that it is impracticable to name and describe them herein.

(e) Of the individual Loew's, Incorporated, defendants, Nicholas M. Schenck is President and a Director, David Bernstein is a Vice-President, Treasurer, and a Director, J. Robert Rubin is a Vice-President and a Director, Leopold Friedman is Secretary and a Director, Isidore Frey is Assistant Secretary and a Director, Charles C. Moskowitz is Assistant Treasurer and a Director, Arthur M. Loew is First Vice-President, Edward A. Schiller, Sam Katz, Edgar J. Mannix and Al Lichtman are Vice-Presidents, John R. Hazel, William A. Phillips, David Warfield, George N. Armsby and William A. Parker are Directors, William F. Rodgers is General Sales Manager, Harry Rapf is a Vice-President and a Director, and Louis B. Mayer is a Vice-President in Charge of Production, of the said Metro-Goldwyn-Mayer Corporation, the production unit of said parent company. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Loew's, Incorporated, and its said subsidiary or associated corporations. Each of the officers named may be found at the principal place of business of Loew's, Incorporated, except the said Louis B. Mayer, the said Edgar J. Mannix and the said Harry Rapf, each of whom may be found at 10202 West Washington Boulevard, Culver City, California, the said John R. Hazel, who may be found at Liberty National Bank Building, Buffalo, New York, the said William A. Phillips, who may be found at the offices of Dillon Read & Company, Nassau and Cedar Streets, New York, New York, the said David Warfield,

who may be found at 135 Central Park West, New York, New York, the said George N. Armsby, who may be found at 40 Wall Street, New York, New York, and the said William A. Parker, who may be found at 60 State Street, Boston, Massachusetts.

(5) (a) Irving Trust Company, a corporation organized and existing under the laws of the State of New York, with its principal place of business at No. 1 Wall Street, New York, New York, is Trustee in Bankruptcy of Radio-Keith-Orpheum Corporation, a corporation organized and existing under the laws of the State of Maryland, with its principal place of business at 1270 Sixth Avenue, New York, New York, and which is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production branch of the industry.

(c) Keith-Albee-Orpheum Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the exhibition branch of the industry.

(d) Pathe News, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organ-

ized and existing under the laws of the State of Delaware, with a place of business at 35 West 45th Street, New York, New York, and is engaged in the production branch of the industry.

(e) The Van Beuren Corporation, a 50% owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 580 Fifth Avenue, New York, New York, and is engaged in the production branch of the industry.

(f) RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the exhibition branch of the industry.

(g) RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the exhibition branch of the industry.

(h) Of the individual defendants, Leo Spitz is President and a Director of Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., and Keith-Albee-Orpheum Corporation; William Mallard is Secretary of Radio-Keith-Orpheum Corporation and Vice-President and Secretary of RKO Radio Pictures, Inc.; Ned E. Depinet is Vice-President and a Director, William H. Clark is Treasurer and a Director, and Jules Levy is General Sales Manager, of RKO Radio Pictures, Inc.; George N. Armsby, Cornelius N. Bliss, Maurice Goodman, James G. Harbord, Edward

W. Harden, DeWitt Millhauser, David Sarnoff, Frederick Strauss, and Lunsford P. Yandell are all Directors of Radio-Keith-Orpheum Corporation; Courtland Smith is President and a Director of Pathe News, Inc.; Merlin H. Aylesworth is a Director and Chairman of the Board of Directors, Malcolm Kingsberg is a Director and Vice-Chairman of the Board of Directors, and Leon Goldberg is Treasurer, of Keith-Albee-Orpheum Corporation. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Radio-Keith-Orpheum Corporation, and its said subsidiary or associated corporations. Each of the officers named may be found at the principal place of business of Radio-Keith-Orpheum Corporation, except the said George N. Armsby, who may be found at 40 Wall Street, New York, New York, the said Cornelius N. Bliss, who may be found at No. 1 Wall Street, New York, New York, the said Maurice Goodman, who may be found at 580 Fifth Avenue, New York, New York, the said James G. Harbord, Lunsford P. Yandell, and David Sarnoff, each of whom may be found at the offices of Radio Corporation of America, 30 Rockefeller Plaza, New York, New York, the said Edward W. Harden, who may be found at the offices of Baker, Weeks & Harden, 52 Wall Street, New York, New York, the said DeWitt Millhauser, who may be found at the offices of Speyer & Company, 24 Pine Street, New York, New York, the said Frederick Strauss, who may be found at the offices of J. & W. Seligman & Company, 54 Wall Street, New York, New York, the said Courtland Smith, who may be found at 370 Lexington Avenue, New York, New York, and the said Merlin H. Aylesworth, who may be found at 812 Park Avenue, New York, New York.

(6) (a) Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures; either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the distribution branch of the industry.

(c) The Vitaphone Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the production branch of the industry.

(d) Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

(e) The subsidiary or associated corporations of Warner Bros. Pictures, Inc., engaged in the exhibition branch of the industry are so numerous and subject to such frequent

changes that it is impracticable to name and describe them herein.

(f) Of the individual defendants, Harry M. Warner is President and a Director, Albert Warner is Vice-President, Treasurer, and a Director, Jack L. Warner, Sam E. Morris and Stanleigh P. Friedman are Vice-Presidents and Directors, Herman Starr is a Vice-President, Robert W. Perkins is Secretary and a Director, Samuel Carlisle is Comptroller, Assistant Treasurer and a Director, of the said defendant Warner Bros. Pictures, Inc.; Gradwell L. Sears and S. Charles Einfield are Vice-Presidents of Vitagraph, Inc.; Joseph Bernhard is a Director of said parent corporation and is also President of Warner Bros. Circuit Management Corporation; W. Stewart McDonald is Vice-President and Assistant Treasurer of Warner Bros. Circuit Management Corporation; and Waddill Catchings, Charles S. Guggenheimer and Morris Wolf are Directors of the said parent corporation. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Warner Bros. Pictures, Inc., and its said subsidiary or associated corporations. Each of the officers named may be found at the principal place of business of Warner Bros. Pictures, Inc., except the said Jack L. Warner and S. Charles Einfield, each of whom may be found at Burbank, California, the said Waddill Catchings, who may be found at the offices of Wired Radio, Inc., 60 Broadway, New York, New York, the said Charles S. Guggenheimer, who may be found at the offices of Guggenheimer & Untermeyer, 30 Pine Street, New York, New York, and the said Morris Wolf, who may be found at the offices of Wolf, Block, Schorr & Solis-Cohen, Room 1024 Packard Building, Philadelphia, Pennsylvania.

(7) (a) Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) Movietonews, Inc., a subsidiary controlled by Twentieth Century-Fox Film Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 444 West 56th Street, New York, New York, and is engaged in the production branch of the industry.

(c) Twentieth Century-Fox Corporation of Texas, a wholly owned subsidiary of Twentieth Century-Fox Film Corporation, is a corporation organized and existing under the laws of the State of Texas, with a place of business at 1801 Wood Street, Dallas, Texas, and is engaged in the distribution branch of the industry.

(d) Twentieth Century-Fox Distributing Corporation, a wholly owned subsidiary of Twentieth Century-Fox Film Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 444 West 56th Street, New York, New York, and is engaged in the distribution branch of the industry.

(e) National Theatres Corporation, 42% of the capital stock of which is owned and controlled by Twentieth Century-Fox Film Corporation, is a corporation organized and

existing under the laws of the State of Delaware, with a place of business at 444 West 56th Street, New York, New York, and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

(f) The associated corporation The Chase National Bank of the City of New York is a corporation organized and existing under the laws of the State of New York, with a place of business at Pine and Nassau Streets, New York, New York, and owns and controls 58% of the capital stock of the aforesaid National Theatres Corporation.

(g) The subsidiary or associated corporations of National Theatres Corporation engaged in the exhibition branch of the industry are so numerous and subject to such frequent changes that it is impracticable to name and describe them herein.

(h) Of the individual defendants, Joseph M. Schenck is a Director and Chairman of the Board of Directors of Twentieth Century-Fox Film Corporation; Sidney R. Kent is President and a Director of Twentieth Century-Fox Film Corporation and National Theatres Corporation, William C. Michel is Executive Vice-President and a Director, Darryl F. Zanuck and William Goetz are Vice-Presidents, Felix A. Jenkins is Secretary and a Director, Sidney Towell is Treasurer and a Director, and Herman Wobber is General Manager of Distribution, of the said defendant Twentieth Century-Fox Film Corporation; H. Donald Campbell, John R. Dillon, William P. Philips, Herman G. Place, Seton Porter, and Daniel O. Hastings are Directors of said defendant Twentieth Century-Fox Film Corporation: Truman H. Talley is Vice-President and a Director of Movietonews, Inc.; Spyros P. Skouras is Executive

Vice-President and a Director, A. S. Gambee is Vice-President, Assistant Secretary, and a Director, H. C. Cox is Vice-President, Treasurer, and a Director, and John P. Edmondson is Secretary, of National Theatres Corporation. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Twentieth Century-Fox Film Corporation, and its said subsidiary or associated corporations. Each of the officers named may be found at the principal place of business of Twentieth Century-Fox Film Corporation, 444 West 56th Street, New York, New York, except the said Darryl F. Zanuck, who may be found at Beverly Hills, California, the said Joseph M. Schenck and the said William Goetz, each of whom may be found at Beverly Hills, California, the said H. Donald Campbell, who may be found at The Chase National Bank of the City of New York, Pine and Nassau Streets, New York, New York, the said Herman G. Place, who may be found at The Chase National Bank of the City of New York, 11 Broad Street, New York, New York, the said John R. Dillon, who may be found at the offices of Hayden, Stone & Company, 25 Broad Street, New York, New York, the said William P. Philips, who may be found at 200 West 56th Street, New York, New York, the said Seton Porter, who may be found at the offices of National Distillers Products Corporation, 120 Broadway, New York, New York, and the said Daniel O. Hastings, who may be found at the Industrial Building, Wilmington, Delaware.

(8) The above described corporation defendants, Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and

Twentieth Century-Fox Film Corporation, will be referred to sometimes hereinafter as producer-exhibitor defendants.

(9) (a) Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) Columbia Pictures Corporation of California, Ltd., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 1438 North Gower Street, Hollywood, California, and is engaged in the production branch of the industry.

(c) Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the production branch of the industry.

(d) Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the distribution branch of the industry.

(e) Columbia Pictures Distributing Company, Inc., a wholly owned subsidiary of Columbia Pictures Corpora-

tion, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 729 Seventh Avenue, New York, New York, and is engaged in the distribution branch of the industry.

(f) Of the individual defendants, Harry Cohn is President and a Director, Jack Cohn is Vice-President and a Director, Charles Schwartz is Secretary and a Director, A. Schneider is Treasurer and a Director, Saul Bornstein, Jack Kerner and Leo M. Blancke are Directors, and Abe Montague is General Sales Manager, of the defendant Columbia Pictures Corporation; Mendel B. Silberberg is Vice-President and a Director, William S. Holman is Secretary, Treasurer, and a Director, of Columbia Pictures Corporation of California, Ltd.; Charles B. Mintz is President and George Winkler is Secretary, of Screen Gems, Inc.; Theodore J. Elias is Assistant Secretary of the parent corporation and a Director in two of the subsidiary corporations, Columbia Pictures Corporation of California, Ltd., and Screen Gems, Inc. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Columbia Pictures Corporation, and its said subsidiary or associated corporations. Each of the officers named may be found at the principal place of business of Columbia Pictures Corporation, 729 Seventh Avenue, New York, New York, except the said Harry Cohn, Mendel B. Silberberg, William S. Holman and Theodore J. Elias, each of whom may be found at 1438 North Gower Street, Hollywood, California, the said Charles B. Mintz, who may be found at 717 North Linden Drive, Beverly Hills, California, the said George Winkler, who may be found at 12024 Hesby Street, North Hollywood, California,

the said Charles Schwartz, who may be found at 1450 Broadway, New York, New York, and the said Saul Bornstein, who may be found at 799 Seventh Avenue, New York, New York.

(10) (a) Universal Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries, as hereinafter more particularly described.

(b) Universal Pictures Company, Inc., a subsidiary controlled by Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the production branch of the industry.

(c) Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the distribution branch of the industry.

(d) Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the distribution branch of the industry.

(e) Of the individual defendants, Nathan J. Blumberg is President and a Director, J. Cheever Cowdin is a Director and Chairman of the Board of Directors, Charles R. Rogers is Executive Vice-President and a Director, Jams P. Normanly is Vice-President, Peyton Gibson is Secretary and Treasurer, of said Universal Corporation; Paul G. Brown, William Freiday, Daniel C. Collins, Ottavio Prochet, Adolph Ramish, Budd Rogers, Daniel M. Sheaffer, and Willis H. Taylor, Jr., are Directors of said Universal Corporation; Samuel Machnovitch is Treasurer, Matthew Fox is Vice-President and Director, William A. Scully and Joseph H. Seidelman are Vice-Presidents, of the subsidiary corporation Universal Pictures Company, Inc. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the parent corporation, Universal Corporation, and its said subsidiary or associated corporations. Each of the officers named may be found at the principal place of business of Universal Corporation, except the said Charles R. Rogers and James P. Normanly, each of whom may be found at Universal Studios, Universal City, California, the said Paul G. Brown, who may be found at the offices of Keystone State Corporation, 1321 Arch Street, Philadelphia, Pennsylvania, the said William Freiday, who may be found at the offices of J. Robinson-Duff & Company, No. 1 Wall Street, New York, New York, the said Daniel C. Collins, who may be found at the offices of Electrical Research Products, Inc., 195 Broadway, New York, New York, the said Ottavio Prochet, who may be found at 935 Fifth Avenue, New York, New York, the said Budd Rogers, who may be found at 1270 Sixth Avenue, New York, New York, the said Daniel M. Sheaffer, who

may be found at Broad Street Station Building, Philadelphia, Pennsylvania, the said Adolph Ramish, who may be found at 647 South Olive Street, Los Angeles, California, and the said Willis H. Taylor, Jr., who may be found at the offices of Pennie, Davis, Marvin & Edwards, 165 Broadway, New York, New York.

(11) The above described corporate defendants, Columbia Pictures Corporation and Universal Corporation, will be referred to sometimes hereinafter as "the producer-distributor defendants".

(12) (a) United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

(b) Of the individual defendants, Attilio H. Giannini is President, a Director and Chairman of the Board of Directors, George J. Schaefer, Harry D. Buckley and Arthur W. Kelly are Vice-Presidents, Lloyd Wright is Secretary and Harry J. Muller is Treasurer, of said defendant United Artists Corporation; Mary Pickford is First Vice-President and a Director, Dennis F. O'Brien is General Counsel and a Director, Edward C. Raftery is Assistant Secretary and a Director, and Charles Chaplin, Douglas Fairbanks and Samuel Goldwyn are Directors, of said defendant United Artists Corporation. As such officers, said individual defendants actively participate, and have participated, in the direction and management of the business and affairs of the said parent corporation, United Artists

Corporation. Each of the officers named may be found at the principal place of business of United Artists Corporation, except the said Attilio H. Giannini, who may be found at No. 1 Powell Street, San Francisco, California, the said Mary Pickford, who may be found at 1021 North Formosa Avenue, Hollywood, California, the said Dennis F. O'Brien and Edward C. Raftery, each of whom may be found at 152 West 42nd Street, New York, New York, the said Charles Chaplin, who may be found at 1416 North LaBrea Avenue, Los Angeles, California, and the said Douglas Fairbanks, who may be found at Beverly Hills, California.

(13) The above described corporate defendant, United Artists Corporation, will be referred to sometimes hereinafter as the "distributor defendant".

(14) All of the corporate defendants hereinbefore described will be referred to sometimes hereinafter as "the defendants".

III. History of the Motion Picture Industry

(15) Upon the optical illusion of motion in pictures has been built, in a period of less than half a century, one of the nation's largest and most important industries. The illusion of motion is created by the projection upon a screen of a series of still photographs of objects in motion. In the modern motion picture the number of pictures thus projected has been standardized at 16 per second.

(16) For several centuries, going back to the invention of the magic lantern, or stereopticon, in 1640 A. D. by the Jesuit Athanasius Kircher, at Rome, the idea of motion in

pictures engaged, but baffled, the inventive genius of mankind, both in Europe and America.

(17) Impetus toward the solution of the problem in the United States was given by the efforts of Leland Stanford of California to prove that at a point in the gait of a trotting horse all four feet are off the ground at the same time. A series of cameras with electrical controls, past which the horse moved, was used to establish the fact. The resulting pictures, when shown on a revolving contrivance in 1880 gave the illusion of motion in pictures.

(18) In 1887, Thomas A. Edison, having completed his work on the phonograph, directed his genius toward the invention of a motion picture machine. This effort, with the aid of photographic film, which had been invented by George Eastman in the meantime, resulted in 1889 in the first Edison Kinetoscope. This consisted of a cabinet into which one observer at a time might look through an aperture and there see the series of pictures photographed on a film of fifty feet, move across his vision. The pictures were magnified and illuminated by an electric bulb placed in rear of the film. The film used in this early Edison machine was about an inch wide, which remains the Standard width today. The pictures were shown, however, at the rate of 48 per second, or about three times the speed of today. The movement of the pictures through the machine was controlled by sprockets which fitted into holes in the film. This idea has been retained in modern motion picture machines. "Peep shows", "penny arcades", containing Kinetoscopes and phonographs with earphones, remained popular forms of public amusement through the first decade of the 20th Century.

(19) In the meantime, the efforts of many men, both in the United States and Europe, were directed toward the invention of a method of projecting motion pictures upon a screen whereby large audiences might view them instead of one person at a time, as in the peep shows.

(20) In 1895, Major Woodville Latham, a Virginia professor living in New York, and Thomas Armat, of Washington, D. C., invented projectors containing the principles upon which the modern machines operate. The Armat invention, called the Vitascope, was manufactured at first under arrangements with the Edison Company of Orange, New Jersey, which Company soon became the foremost manufacturer of projectors, either domestic or foreign.

(21) The Motion Picture Industry is commonly regarded as having had its origin with the presentation of moving pictures at Kosta & Bial's Music Hall, Herald Square, New York City, on April 23, 1896, through the device of Thomas A. Edison's latest marvel, the "Vitascope", as it was referred to upon the programme of the Music Hall.

Period 1896-1908

(22) The novelty of motion pictures soon gripped the nation and gained great popularity for a time in vaudeville houses and music halls. However, motion pictures were but a single item upon the program of these houses, and within a few years it was thought that the novelty of motion in pictures had worn off and, consequently, motion pictures were largely eliminated from the programs of the variety shows

of that day. However, Nickelodeons—occupying, for the most part, old vacant stores and rooms—sprang up like mushrooms all over the country.

(23) The commercial possibilities of the motion picture fired the imaginations of many men from the beginning. Soon manufacturers of moving picture machines and projectors appeared in various cities of the country. Within two years after the first public presentation of motion pictures at Kosta and Bial's Music Hall, the Edison companies instituted a series of suits to protect Edison's various patents covering motion pictures, which he claimed were being infringed by others who had entered the field. The patent war thus started did not end until the formation of the Motion Picture Patents Company in 1908.

(24) At first, motion picture films were sold outright to exhibitors upon a footage basis. Soon a situation resulted where exhibitors all over the country had films on their hands that had been exhibited in their own theatres. This gave rise to film exchanges in various parts of the country, operated wholly on a local basis, where the various exhibitors could go and exchange stale films for ones that had not been shown in their respective theatres. From these earliest exchanges the distribution of pictures upon a rental basis by distributors who maintained and operated them soon developed and the distributor thus became the middle man between the producer and the exhibitor.

(25) The art of narration in moving pictures began in 1903 when Edwin S. Porter, an Edison cameraman, after some preliminary experimentation, produced "The Great Train Robbery".

(26) The use of artificial light in photography was introduced in 1899 in the filming of the Jeffries-Sharkey prize fight at Coney Island. By 1906 studios were adopting artificial instead of day light in photography.

(27) The length of a film became fixed at a single reel of 1,000 feet, and the demand for films in the hundreds of small theatres springing up in all parts of the country caused a rush of production which was absorbed by the distributors as fast as it could be made. Quantity, not quality, was the leading consideration. In the early days, the business of making pictures, where the product was sold to the distributors outright upon a footage basis, was thought to be comparable to any other manufacturing business.

Period from 1908 to 1919

(28) By 1908 there were ten well established companies in the United States which were either producing or importing motion picture films and selling them to exchanges scattered throughout the country, but still operated on a local basis. From these exchanges films were distributed to exhibitors upon a rental basis. At that time it was estimated that there were between 125 and 150 exchanges and 6,000 exhibitors in the United States. Up to that time, in excess of $100,000,000 had been invested in the industry.

(29) In 1908, largely to escape the ravages of the patent war conducted chiefly by the Edison companies, the ten leading manufacturers decided to pool their interests and patents in the Motion Picture Patents Company. These companies were: Biograph, Kalem and Pathe, New York;

Vitagraph, Brooklyn; Edison, New Jersey; Lubin, Philadelphia; and Essanay, Kleine, Meli, and Selig, Chicago.

(30) Each manufacturer took a license from the Patents Company entitling it to produce and lease motion pictures. By a system of licenses extending to distribution and exhibition, control of the industry was contemplated. The licenses generally covered all branches of the industry, including cameras, film, and projectors. Relying upon rights extended by the United States Patent Laws, it was anticipated that the control of the industry would be complete.

(31) Soon the General Film Company was organized to distribute the films of the ten producers on a national scale. Exchanges were either established or independent exchanges bought out. Distributors either had to find independent production to supply them with films, and exhibitors who would take their product, or go out of business.

(32) But the Patents Company was met by a militant group of independent producers, distributors, and exhibitors, and a number of litigations followed. Private suits for damages under the antitrust laws were instituted by independents, and finally the Government, in a suit in equity instituted in 1912, brought about the dissolution of the Motion Picture Patents Company by a decree dated January 24, 1916.

(33) Meanwhile, the motion picture art had been going forward. The Standardized Film of one reel of 1,000 feet was rapidly displaced after 1912 by the feature picture of four reels or more. While the Motion Picture Patents Company adhered to the idea of short, standardized films of

one reel and a daily change of program to be sold on a footage basis, others who had made a careful study of audience reaction were convinced that the time had arrived for further advances in the art. Complete stories, plays, and books were to be translated by the motion picture. Among the early advocates of this change was Adolph Zukor, who formed the Famous Players Company in 1912, imported "Queen Elizabeth", in which Sarah Bernhardt appeared, and soon "The Prisoner of Zenda" with James K. Hackett, a well known actor, was produced and distributed. Other feature productions soon followed. The appeal of motion pictures was extended, the tone of the entertainment lifted, the character of the theatres improved, and the industry in the brief period of a few years was to grow beyond all anticipation.

(34) The introduction of feature pictures brought about important changes in the marketing of films. Theretofore, films were generally sold at a flat price for a daily program, with the price fixed according to the size and location of the theatre. Under this system, many theatres in the same city might show the same picture on the first day of its release, or "day and date" as this practice has come to be called in the industry. With the appearance of feature pictures, the better theatres were willing to pay higher rentals for the right of exclusive exhibition before the pictures were made available to others upon subequent run. As a result, first run was given protection over second or subsequent runs for a week or two only. This protection period is sometimes called "clearance", denoting the period or length of time between a prior and a subsequent showing of a picture. A "zone" indicates a specified geographical

area within which a definite clearance schedule is operative. As ordinarily used in the industry, protection embraces both clearance and zoning. Protection has come to be and is one of the most contentious trade practices with which the industry is confronted. It will be referred to more specifically hereinafter.

(35) From a position of comparative obscurity in 1912, by 1916 Adolph Zukor and his Famous Players Company had become one of the dominating influences in the industry. The feature pictures of his company were in demand the country over and were recognized generally as the best pictures on the market. A national distribution system had been secured through the acquisition of the control in that year of Paramount Pictures Corporation, which had been organized two years before by William W. Hodkinson, a San Francisco distributor. Four other companies producing the same type of pictures were merged with Famous Players; namely, Jesse L. Lasky Feature Play Company; Bosworth, Inc.; Morosco Photoplay Company; and Cardinal Film Company. Later, all these companies, with Paramount Pictures Corporation and Artcraft Pictures Corporation, were merged into the Famous Players-Lasky Corporation, one of the predecessors in interest of the defendant Paramount Pictures, Inc.

(36) These years marked the tremendous increases in the salaries of star players, and, at that time, Zukor was planning to dominate and control the industry by placing popular stars under contract. A great many of them actually signed up with the Zukor organization.

(37) The cost of making pictures had mounted abruptly, due principally to the rise in salaries of stars,

directors and technicians of all kinds. When these costs were passed on to the distributors and exhibitors, who had largely remained independent of producers, great alarm was felt by the persons engaged in these two branches of the industry, and resulted, in 1917, in the organization of First National Exhibitors Circuit, an association of exhibitors, which, through a system of franchises, sought to assure its membership of a constant, satisfactory supply of pictures.

(38) Many of the theatres in the new association were and had been customers of Famous Players. Thus the market for the pictures of that company was being threatened, and soon stars and feature players, with directors and other personnel, were being bid away from Famous Players by First National Exhibitors Circuit.

(39) Out of this situation grew a trade war which was to have far-reaching effects upon the industry.

(40) After dissolution of Motion Picture Patents Company in 1916, competition in the industry was free, open and untrammeled. With a few minor exceptions, the three divisions of the industry remained separate and independent of each other. Production was plentiful and uncontrolled; an abundance of film exchanges existed upon which the exhibitors might call for motion picture product.

(41) A prevalent opinion throughout the industry believed that the future health, growth and prosperity of the industry generally depended upon a continued separation of the three branches of production, distribution, and exhibition. In the course of the trade war with First National

Exhibitors Circuit, Adolph Zukor, after careful deliberation, issued an exhaustive statement of his views upon this subject on October 25, 1918, in VARIETY, a trade publication. In this statement, Mr. Zukor said, in part:

> The evil of producing and exhibiting coalitions is one of the gravest perils that has ever confronted the motion picture industry. For some time past this condition has been developing and now threatens to halt the industry's progress, if indeed it does not set it back beyond the point at which it first took its place among the organized industries of the day. It has been permitted to develop this far because no one individual, either producer or exhibitor, has dared face the facts himself, and compel other producers and exhibitors to face them with him.
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> Young as the motion-picture industry is, it has progressed so rapidly and so far within a short space of time as to develop unique talents and create a new variety of specialists. No less true than the physical law that a body cannot occupy two places at the same time is the psychological law that a mind cannot do two separate things equally well.
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> We should all realize that the most effective way to develop the industry to its largest capacity is to maintain a broad open field of endeavor in its every branch. The exhibitors now enjoy the advantage of having the choice of several well-established feature programs from which they

can select any range of subjects suitable to their individual requirements. Also because these producing firms are well established they are in a position to produce pictures far ahead of release date, giving the exhibitor an added advantage in being able to arrange his bookings far in advance, and therefore avail himself of a careful selection of subjects. The producers, in feeling that they have all the exhibitors in the country as prospective customers, are encouraged to make greater efforts and expend bigger sums for their productions and equipment. On the other hand, the exhibitors, in keeping all their lines open, have the choice of all the productions on the market. In this manner the business opportunities of both factors are unrestricted and permissible of any possible expansion. The moment exhibitors limit the market of producers, or the producers limit the buying opportunities of the exhibitor, the business is retarded and its growth is stunted. * * *

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Let them grow and develop in one sphere of activity, let them become experts, specialists. Do not let them scatter their energies and distribute their talents over so wide a field as to have no weight in any one. This appeal extends to the leaders as well as the followers, to the chiefs as well as the subordinates, engaged in whatsoever branch of the industry. Let us coordinate all our work, producing, distributing, exhibiting, to the best of our mutual interests—which all the better elements of the trade are now trying to do—but let us avoid such a close unification that the exhibitor becomes wholly

or partly a producer, or the producer slightly or extensively an exhibitor.

* * * * *

If the business is to progress it must advance upon the basis of free and unhampered selection of product for exhibitors, large and small, and the exhibitors alone can cure this evil by a resolute refusal to be drawn into any allied booking scheme, even if the results promised are of temporary benefit to themselves. * * *

I see it today as clearly as I saw the need for better pictures in 1912 that if the producer and exhibitor do not coordinate their interests and permit full and unlimited activity in their own spheres, the industry will drift into the same chaotic condition out of which it emerged only in recent years.

If exhibitors establish or rent studios for the production of pictures, the producers will have to build theatres, not in order to rebuke the exhibitors, but for the simple reason that that will be the only means open to them to protect their producing investments. Such a condition would result in ruinous competition in both branches of the industry—but the producer would have the advantage because he would already have the goods to sell, and the ability and experience to make the better pictures.

I hope the situation never develops to such a point. So does everyone else who has analyzed the business and looks forward to a brighter future for it. Every branch of the motion picture business is big enough, at present and for future growth, without seeking new worlds to conquer. * * *

(42) Mr. Zukor thus foresaw that expansion by producers and distributors into the exhibition field would result in great friction, particularly with former customers of the producers and distributors, with whom they would come into competition as exhibitors. He likewise foresaw the danger inherent in the acqusition of production facilities by exhibitors.

Period from 1919 to date

(43) After some ineffectual efforts to adjust threatened competitive differences with First National Exhibitors Circuit, Mr. Zukor determined to go into exhibition. This he did in 1919, notwithstanding his pronouncements of the year before that the future well-being of the industry demanded a continued separation of production, distribution and exhibition.

(44) Financed through a ten-million-dollar preferred stock issue underwritten by the New York banking house of Kuhn, Loeb and Company, Zukor moved swiftly in the acquisition of extensive theatre interests throughout the South, in New England, in many large cities throughout the country, and finally, by the acquisition in 1925 of the Balaban & Katz theatre interests in and around Chicago.

(45) In many places First National Exhibitors Circuit franchise holders were bought out, thus weakening that organization and, at the same time, strengthening Famous Players-Laskey Corporation.

(46) The entry of Famous Players-Laskey Corporation into the field of exhibition in 1919-1920 brought about

the struggle for market control foreseen by Mr. Zukor and was followed by a train of events leading up to the combinations and conspiracies, the monopoly and the monopolization, violative of the Sherman Act, of which complaint is made hereinafter.

(47) Other producers expanded their activities in an attempt to control a portion of the market. Such activities manifested themselves in at least two ways: First, the producers acquired their own theatres; second, they merged or affiliated with companies controlling theatres.

(48) Marcus Loew, the founder of defendant Loew's, Incorporated, owner of a large chain of vaudeville and motion picture theatres situated largely in the metropolitan area of New York City, and his associates became frightened because of the fact that the producer, the man who makes the pictures, was buying theatres. They felt that they would have to protect themselves by having a producing company of their own. As a consequence, Metro was acquired by Loew's, Incorporated, in 1920. In 1924 Metro was merged with the Goldwyn and Mayer companies under the name of Metro-Goldwyn-Mayer, all of whose capital stock is owned and held by the defendant Loew's, Incorporated.

(49) In the struggle for theatres which continued through the 1920's, five companies emerged with production facilities and large theatre holdings, to wit, the defendants Paramount Pictures, Inc.; Loew's, Incorporated; Fox Film Corporation, the predecessor of Twentieth Century-Fox Film Corporation; Radio-Keith-Orpheum Corporation, created by a merger of production, distribution, and exhibi-

tion interests, including Robertson & Cole, which had been reorganized under the name of Film Booking Office of America, Inc., and Keith-Albee-Orpheum Theatres, Inc.; and, finally, Warner Bros. Pictures, Inc.

(50) In acquiring theatre circuits, these five producer-exhibitor defendants did not enter the same territory, or territories, to any great extent. This has resulted in a virtual division of territory between them. Thus the theatres affiliated with the defendant Paramount Pictures, Inc., are located, for the most part, throughout New England, through the South, in Chicago, Detroit, and in certain areas of the Midwestern States, Rocky Mountain States, and Northwestern States. The theatres of Loew's, Incorporated, are located principally in larger Cities of the United States. Twentieth Century-Fox Film Corporation holds a large interest in National Theatres Corporation, which controls Evergreen State Amusement Corporation, operating theatres in the States of Washington and Oregon, Fox West Coast Theatres Corporation, operating theatres on the Pacific Coast, Fox Inter-Mountain Theatres, Inc., operating theatres in Rocky Mountain States, Fox Midwest Theatres, Inc., operating theatres in Midwestern States, and Wisconsin Amusement Enterprises Corporation, operating theatres in Wisconsin. The defendant Universal Corporation formerly engaged in exhibition, owning and operating its own theatres. At the present time, however, it is only engaged in the production and distribution branches of the business. The defendant Radio-Keith-Orpheum Corporation owns and operates theatres located mostly in large, metropolitan cities where the population is of sufficient density to afford ample patronage wherever its theatres come

into competition with the theatres of Loew's, Incorporated, or of others.

(51) A detailed description of the location of theatres owned, controlled or operated by the five producer-exhibitor defendants is made in paragraphs 122 to 126, *infra*.

(52) Warner Bros. Pictures, Inc., not having acquired any extensive theatre holdings down through the year 1926, was gradually having its market for pictures shut off through the acquisition of theatre holdings by the other producer-exhibitor defendants. Its financial condition was weakened as it felt the lack of a satisfactory market for its product. The entrance of talking pictures into the moving picture industry completely changed the situation for Warner Bros. Securing the rights to Vitaphone, which had been developed by the engineers of the Bell Telephone Laboratories, the Warner company, within a few brief years, with the success of talking pictures, turned from the brink of ruin to prosperity. It became, and still remains, one of the largest and most powerful companies in the industry. Little time was lost by Warner Bros. Pictures, Inc., in acquiring theatres, once affluence returned. In 1928, it acquired control of Stanley Company of America with its large theatre circuit extending through the Middle Atlantic States and the District of Columbia, and also that company's control of First National Pictures Corporation, which retained only its production interests, having disposed of its theatre holdings to Paramount and others as time had gone on.

(53) During the depression, two of the parent company defendants, or their predecessors in interest, went into

bankruptcy. Paramount Publix Corporation, the predecessor of Paramount Pictures, Inc., filed a petition in bankruptcy in the Federal District Court for the Southern District of New York in 1933 and was reorganized under Section 77B of the Bankruptcy Act on June 17, 1935, under name of Paramount Pictures, Inc. Radio-Keith-Orpheum Corporation went into bankruptcy on January 27, 1933, and its reorganization has not been approved by the District Court for the Southern District of New York, where its petition in bankruptcy was also filed. Fox Film Corporation, the predecessor of the parent company defendant, Twentieth Century-Fox Film Corporation, was voluntarily reorganized with the consent of its creditors and security holders in the summer of the 1933, and, in 1935, acquired, through merger, the Twentieth Century Company.

(54) The years 1935, 1936, and 1937 saw the return of prosperity to the motion picture industry. Attendance at theatres has increased so as to compare favorably with 1929 and 1930. Theatre expansion was again undertaken, particularly by the producer-exhibitor defendants, and, with the return of better business, admission prices were increased by them.

IV. Description of the Industry

(A) Branches of the industry

(55) The industry is composed of three branches, namely, (1) production, which comprises the preparation for and actual making of motion pictures and the preparation thereof for market; (2) distribution, which has to do with the maintenance of facilities for the distribution of

films from various key cities throughout the country, and the actual distribution of films to the theatres or exhibitors; and (3) exhibition, which has to do with the actual exhibition of motion pictures in the theatres.

(56) In the early days of the industry, these three branches were separate and independently operated by specialists in each field. Gradually, however, the three branches of the industry were integrated by large and successful companies. Today, the following defendant parent companies have integrated the three branches under their respective controls: Paramount Pictures, Inc., Loew's, Incorporated, Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corporation, and Radio-Keith-Orpheum Corporation. Production and distribution have been integrated by the defendants Columbia Pictures Corporation and Universal Corporation. The remaining defendant, United Artists Corporation, is engaged in the distribution of motion pictures made by associated producers, some of whom are owners and holders of its capital stock.

(57) The three branches of the industry will now be described separately in the order named, to wit, (1) Production, (2) Distribution, and (3) Exhibition.

(1) Production

(58) Definitions of some of the terms used in connection with production are as follows:

(59) *Producer.*—This term includes, without limitation, all persons, partnerships, associations and corporations who engage or contract to engage in the production of motion pictures.

(60) *Major producer.*—A major producer is one of the eight parent companies defendants herein. Strictly speaking, however, the defendant United Artists Corporation is a distributor rather than a producer.

(61) *Independent producer.*—A producer who is not in any way affiliated with the major producers.

(62) *Negative film.*—Negative film is photographic stock which is used in a motion picture camera and upon which is recorded in reverse black and white relationship images of objects which appear in front of the camera.

(63) *Positive film.*—Positive film is photographic stock to which the images upon the negative film have been transferred in normal black and white relationship by a printing device. Positive film is used in projection machines which throw upon the screen the images on the film.

(64) *Motion picture.*—The "motion picture" consists of a number minute photographs of moving objects taken at the rate of 15 or more pictures per second, the positive prints of which are projected upon a screen in rapid succession.

(65) *Reel.*—A reel is the spindle upon which motion picture film is wound, or, as more ordinarily used, designates approximately 1,000 feet of positive motion picture film wound upon a spindle.

(66) *Feature.*—A feature is any motion picture, the length of the film of which is approximately four thousand feet (usually four reels) or more.

(67) *Short Subject.*—Short subject is a motion picture the length of which is less than four thousand feet (four reels).

(68) *Star.*—A star is a motion picture actor or actress who is especially popular among the motion picture public and who is featured in the pictures in which he or she appears.

(69) *Western Picture.*—A western picture is a feature motion picture which deals with life upon the western frontier of the United States, generally depicting the dangers and adventures of the lives of cowboys, Indians or miners, or other inhabitants of those areas.

(70) In the early days, motion pictures were made in any improvised studios that could be found, located, for the most part, in the large eastern cities of the United States, such as New York, Philadelphia, Boston, Cleveland, and Chicago.

(71) In the year 1907, or thereabouts, the first studio was opened near what is now Hollywood, California. Slowly, at first, and then with a rush all motion picture producers with sufficient means opened studios or obtained studio facilities at or in the vicinity of Hollywood, with the result that today about ninety per cent (90%) of the American production of motion pictures takes place in Hollywood; most of the remaining ten per cent are made in New York City or its environs. Climatic conditions permitting the production of pictures the year round account for the migration to California.

(72) The defendant parent companies operate and maintain studios in California as follows: Paramount Pictures, Inc., at 5451 Marathon Avenue, Hollywood; Columbia Pictures Corporation, 1438 North Gower Street, Hollywood; Loew's, Incorporated, through Metro-Goldwyn-Mayer Corporation, 10202 West Washington Boulevard,

Culver City; Radio-Keith-Orpheum Corporation, at 780 North Gower Street, Los Angeles; Twentieth Century-Fox Film Corporation, Beverly Hills; Universal Corporation at Universal City; United Artists Corporation at 1041 North Formosa Avenue, Hollywood; and Warner Bros. Pictures, Inc., at Burbank.

(73) Independent producers operating in California either maintain or lease studio facilities in or near Hollywood.

(74) Three general types of motion pictures are produced: (a) feature pictures of four reels or more in length, (b) short subjects of less than four reels in length, and (c) news reels. Approximately 80% of the better motion picture films contained in the first class, or type (a) above, are produced each year by the defendant companies herein, their respective subsidiaries, and associates.

(75) For the five exhibition seasons, 1932-33 to 1936-37, inclusive,—an exhibition season covering the period from September 1 of one year to August 31 of the following year—the release of feature films by the defendant major companies has been as follows:

	1932-33	1933-34	1934-35	1935-36	1936-37
Columbia	26	35	37	40	58
Fox	44	47	45	58	66
Metro	44	39	44	51	42
Paramount	59	57	52	65	52
RKO	45	41	42	42	54
United Artists	16	15	24	20	34
Universal	26	35	36	36	39
Warner	52	54	48	54	60
Total	312	323	328	366	405

(76) Motion pictures of the finer type featuring well known stars, and having the greatest public appeal, are produced almost exclusively by the major companies, defendants herein, who, by reason of their position in the industry, their financial power, equipment and organization, are able to command the services of the finest stars, the most accomplished directors, and the most skillful technicians, whose combined efforts insure the production of successful pictures.

(77) Without access to the product of the major companies, or some of them, an exhibitor's opportunity for the successful operation of his theatre is small.

(78) Statistics compiled by the United States Department of Commerce indicate that 28,500 persons are employed in production.

(2) Distribution

(79) Definitions of some of the terms used in connection with distribution are as follows:

(80) *Distributor.*—A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. The prints are usually licensed to the exhibitor. However, the arrangement is frequently referred to in the industry as a sale.

(81) *Major Distributor.*—A distributor who is one of the eight parent companies defendants herein.

(82) *Independent Distributor.*—A distributor who is not in any way affiliated with the major distributors.

(83) *Exchange.*—An exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors, of films and advertising matter concerning them. The word "exchange" was first applied to organizations formed by groups of exhibitors to exchange, somewhat in the manner of a circulating library, films produced by companies independent of General Film Company. Later, the word came to be applied to all branch offices of distributors.

(84) *Franchise.*—The term "franchise" is capable of general definition only. It is an exclusive right and duty to exhibit and/or distribute, throughout a specified territory, all the pictures produced, purchased, or distributed by any company, which right and duty is created by contract between such company and the franchise holder.

(85) *Booking.*—Booking is an arrangement between distributor and exhibitor whereby playing dates are determined and fixed for the showing of pictures which have been licensed for exhibition. The term is sometimes loosely used in the sense of licensing pictures or entering into licensing agreements for the exhibition of pictures.

(86) *Block.*—A block of motion pictures is a number of pictures grouped together for licensing.

(87) *Block Booking.*—Block booking is the simultaneous licensing of a number of pictures to exhibitors for exhibition, the pictures being offered together and the aggregate price for all of the pictures being dependent upon the quantity taken by the exhibitor, and requiring the exhibitor to contract for all of the pictures offered in order to get any of them. The unfair use of block booking is more fully set out in Paragraph 214, section 1, hereof.

(88) Distribution of motion pictures is accomplished through a system of national exchanges. At first, exchanges were established locally—by exhibitors, as a rule—and operated on what was known as a "States rights" basis, whereunder an exchange would secure the right from a producer to distribute or lease his pictures in a given area, extending into one or more adjacent States. Gradually, however, the more successful producers secured national distribution of their films through exchanges of their own.

(89) To some extent, at least, independent producers still rely on States rights exchanges for the distribution of their pictures.

(90) From figures compiled as of August 1, 1937, by the United States Department of Commerce, it is indicated that there are 103 distributors of theatrical film in the United States operating 431 film exchanges located in 40 key cities.

(91) The eight major producers, defendants herein, maintain their individual film exchanges in the following twenty-six (26) cities: Atlanta, Georgia; Boston, Massachusetts; New York and Buffalo, New York; Charlotte,

North Carolina; Chicago, Illinois; Cincinnati and Cleveland, Ohio; Dallas, Texas; Denver, Colorado; Detroit, Michigan; Indianapolis, Indiana; St. Louis and Kansas City, Missouri; Los Angeles and San Francisco, California; Milwaukee, Wisconsin; Minneapolis, Minnesota; New Haven, Connecticut; New Orleans, Louisiana; Omaha, Nebraska; Philadelphia and Pittsburgh, Pennsylvania; Salt Lake City, Utah; Seattle, Washington; and Washington, District of Columbia. In addition thereto, all except United Artists have exchanges in the following key cities: Albany, New York; Des Moines, Iowa; Memphis, Tennessee; Oklahoma City, Oklahoma; and Portland, Oregon. Paramount, Loew's and Columbia maintain exchanges in Butte, Montana; Paramount and R-K-O maintain exchanges in Jacksonville, Florida, and Sioux Falls, South Dakota; while Paramount alone maintains exchanges in Columbus, Ohio; San Antonio, Texas; and Portland, Maine.

(92) The distribution of motion pictures by film exchanges involves the mastery over a great amount of detail, and has been reduced, through years of experience, to a fine science which includes the booking of pictures for all exhibitions in an exchange area, the fixing of play dates in the various theatres, and the duty of keeping the films flowing in a constant stream to and from theatres to whom the pictures have been licensed, in order to meet contractual obligations, and the constant repair of films after they have played one theatre and before they move on to the next. A sales force is also maintained in connection with each film exchange, whose efforts are largely directed toward the sale of films to independent exhibitors, as will be more fully pointed out hereinafter.

(93) The major distributors, in some instances, distribute physically through their exchanges motion pictures produced by others, but, on the whole, these exchanges are maintained and utilized by these companies for the distribution of pictures produced by their own organizations.

(94) As of August 1, 1937, 12,500 persons were employed in the distribution branch of the industry.

(3) Exhibition

(95) Definitions of some of the terms used in connection with exhibition are as follows:

(96) *Exhibitor.*—The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

(97) *Affiliated Exhibitor.*—By the "affiliated exhibitor" reference is made to an exhibitor engaged in the business of operating a motion picture theatre which is owned, controlled, or managed by a major producer or distributor, or in which a major producer or distributor has a financial interest in the ownership, control, or management thereof.

(98) *Affiliated Theatre.*—This is a theatre owned, controlled, or managed by a major producer or distributor, or in which a producer or distributor has a financial interest in the ownership, control, or management thereof. All major producers and distributors are defendants herein.

(99) *Unaffiliated Theatre.*—This is a term applying to an exhibitor engaged in the business of operating a motion

picture theatre the business of which is not owned, controlled, or managed by any major producer or distributor, or in which no producer or distributor has any financial interest.

(100) *Legitimate Theatre.*—A legitimate theatre, or legitimate house, is one in which productions of the spoken stage are given.

(101) *Legitimate Production.*—As ordinarily used in the industry, a legitimate production refers to theatrical performances.

(102) *Motion Picture Season.*—The motion picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next. It is customary for producers to announce their program of pictures for the coming motion picture season several months before its commencement.

(103) *Screen.*—A screen is a rectangular piece of white fibre or cloth varying in size depending upon the size of the theatre in which it is placed, but whose minimum size is six by eight feet. It is set vertically upon the stage or in the front of the theatre and the motion picture to be viewed is projected upon it.

(104) *Screening.*—The screening of a motion picture is its projection upon a screen where it may be viewed.

(105) *Release.*—The term "release" is used in the motion picture industry to designate either a motion picture or the making of such picture available for distribution to exhibitors.

(106) *Release Date.*—This is the date upon which a motion picture is made available for distribution. It is now usual, because of exploitation and financial advantages, to have a common release date throughout the whole of the United States. There may be, however, a considerable period, sometimes as much as a year, between the release dates for different sections of the country.

(107) *Pre-Release.*—A "pre-release" is a public exhibition of a motion picture, prior to the date of its general release, usually given in legitimate theatres situated in one or more of the larger cities of the United States.

(108) *Road Show.*—A road show of a motion picture derives its meaning from the legitimate theatre, where productions were given in different cities, the members of the cast traveling from city to city. With respect to motion pictures, a "road show" is a form of pre-release, whereby pictures of exceptional merit are shown in various large metropolitan cities before being released nationally, and are usually shown in legitimate theatres at admission prices comparable to those charged for legitimate plays.

(109) *Key City.*—The term "key city" is not capable of exact definition. It is used in the trade to denote a city (a) in which the best motion pictures are regularly given their first-run exhibition, and gross their largest returns, in the district in which such city is located, (b) which is of such a size that the exhibition of a picture in a first-class first-run theatre situated in it advertises such picture among the exhibitors and the motion picture public throughout the district in which such city is located, and (c) in which companies distributing motion pictures maintain exchanges.

Generally speaking, each key city (no matter which definition of the term is adopted) has a population of 25,000 or more. Estimates as to the number of key cities in the United States vary from 50 to 200. Obviously, whether any city is a key city in the first or second sense is a question of opinion and degree. Smaller or less important key cities within the sphere of influence of a larger, important key city are often called sub-key cities.

(110) *First Run.*—A first run is the initial exhibition of a motion picture in any zone, and the run which regularly grosses the largest returns for a given area. The run immediately following a "pre-release" run is often called a first run. The term has great latitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances. An exhibition of a picture may be a first run for a particular section of a city even though it has already been exhibited in another section of the same city, depending upon the limits which are placed upon the section in which it was first exhibited.

(111) *Second Run.*—A second run is the exhibition of a motion picture in any zone next subsequent to its first run.

(112) *Repeat or Subsequent Run.*—A repeat or subsequent run is any exhibition of a motion picture in a zone subsequent to its first run therein.

(113) *Single and Double Feature Programs.*—A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment, either in the form of short subjects and news

reels or, sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature-length films on one program for a single admission price. As a rule, no other form of film entertainment accompanies a double feature program.

(114) *Neighborhood House.*—A "neighborhood house" is a motion picture theatre located in a residential neighborhood of a city, where there is little transient trade.

(115) *Shooting Gallery.*—This is a term applied to a poorly equipped motion picture theatre which has been converted into such from a store or other commercial building and in which cheap, melodramatic pictures, such as westerns, are exhibited. The name arose because numbers of shooting galleries, which likewise housed penny arcades, were, in the early days of the motion picture industry, converted into these theatres.

(116) Statistics compiled by the United States Department of Commerce from reliable sources within the industry covering the theatres extant in the United States for the years 1932-1937, inclusive, are as follows:

	Total	Seating Capacity
1932	20,100	10,767,411
1933	19,311	11,161,193
1934	18,371	11,028,950
1935	18,263	11,132,595
1936	18,508	11,308,041
1937	18,818	11,470,899

(117) The division of theatres between Affiliated Circuits, Unaffiliated Circuits and Independent Theatres for the years 1933-1937 is set out below. By affiliated theatres are

meant those theatres affiliated with the major companies in the industry, which are the eight parent-company defendants herein.

Affiliated Circuit Theatres

	Total	Seating Capacity
1933	2,266	2,937,644
1934	1,954	2,586,643
1935	2,073	2,718,701
1936	2,192	2,908,226
1937	2,397	2,940,070

Unaffiliated Circuits

	Total	Seating Capacity
1933	3,189	2,561,726
1934	2,846	2,493,382
1935	3,070	2,539,416
1936	3,464	2,766,806
1937	3,910	3,005,039

Independent Theatres

	Total	Seating Capacity
1933	13,796	5,585,830
1934	13,571	5,948,925
1935	13,120	5,874,478
1936	12,852	5,633,009
1937	12,511	5,525,790

(118) An analysis of these statistics indicates that for the year 1937 affiliated circuit theatres, numbering 2,397, constituted 13% of the whole number of theatres and furnished 25+% of the total seating capacity. Unaffiliated circuit theatres, numbering 3,910 constituted 21+% of the whole number of theatres and furnished 26% of the total seating capacity. Independent theatres, numbering 12,511, constituted 66% of the whole number of theatres and fur-

nished 49% of the total seating capacity. The average seating capacity of the affiliated theatres for the year 1937 was 1,226+, of the unaffiliated, 768+, and of the independent theatres, 441+. A steady increase in the number of affiliated and unaffiliated circuit theatres is indicated from 1934 to and including 1937. A steady decrease in the number of independent theatres from 1933 to and including 1937 is indicated.

(119) For exhibition purposes, theatres are generally divided in to the following classifications:

(a) *First-run theatres,* which are the theatres which enjoy, by contract or otherwise, the primary outlet or run of pictures in the communities where they are located. In the larger cities and metropolitan areas, these first-run theatres are sometimes termed "metropolitan first-run theatres."

(b) *Second- or subsequent-run theatres* are theatres having the right or privilege of showing pictures on second or subsequent run in the respective communities where they are located. In large metropolitan areas, second or subsequent runs are sometimes considered as "continuous first run" for the purpose of fixing clearance over following runs. As heretofore defined, "clearance" denotes a period of time between the completion of a showing of a picture in one theatre and the beginning of a showing in a subsequent-run theatre.

(c) *First-run neighborhood theatres* are theatres which are located in the residential or suburban parts of large cities and over which the first-run metropolitan theatres have protection, or clearance.

(d) *Subsequent-run neighborhood theatres* are theatres located in the residential or suburban parts of large cities

and which are subject to protection enjoyed by first-run neighborhood theatres.

(120) Metropolitan first-run theatres, sometimes referred to in the industry as Metropolitan DeLuxe Theatres, supply a market for motion pictures which is of vital importance to their profitable exhibition and subsequent exploitation. By their exhibition in these theatres, coupled with the various forms of advertising that accompanies such exhibition, such theatres promote and control the value of pictures to subsequent-run exhibitors. The owners of subsequent-run theatres as well as the public are thereby made conscious of the existence of particular motion pictures. The reaction of audiences to the exhibition of pictures in Metropolitan DeLuxe Theatres is largely determinative of the popularity and success of pictures on subsequent run. Furthermore, a large part of the gross revenues from the exhibition of a picture is derived from the first-run exhibition in Metropolitan DeLuxe Theatres.

(121) The five producer-exhibitor defendants now and for many years past have dominated and controlled almost all of the metropolitan de luxe theatres the country over. Incentive to independent production is very much decreased by reason of the inability of independent producers to gain access to this market.

In compiling the hereinafter contained lists of metropolitan first-run theatres, or metropolitan de luxe theatres, as they are sometimes referred to in the industry, a selection of 36 of the larger and more important key cities was taken. The said lists, as prepared, indicate the approximate number of first-run theatres of the various producer-exhibitor defendants located in those cities as of the present time. These theatres afford the primary first-run market for feature films in the cities thus selected.

Theatres of Defendant Paramount Pictures, Inc., throughout the United States

(122) Theatres operated by Paramount Pictures, Inc., its subsidiary or associated companies, throughout the United States are as follows:

(a) Metropolitan DeLuxe Theatres:

City	No. of theatres	City	No. of theatres
Atlanta, Ga.	4	Memphis, Tenn.	2
Boston, Mass.	3	Newark, N. J.	1
Charlotte, N. C.	3	New Haven, Conn.	1
Chicago, Ill.	6	New Orleans, La.	3
Dallas, Texas	5	New York, N. Y.	1
Detroit, Mich.	3	Omaha, Nebr.	2
Houston, Texas	3	Salt Lake City, Utah	3

constituting 40 theatres in 14 cities.

(b) Other theatres operated by defendant Paramount Pictures, Inc., its subsidiary or associated companies, indicated by States and number of theatres in each:

State	No. of theatres	State	No. of theatres
Alabama	34	New Hampshire	9
Arizona	6	New Jersey	1
Arkansas	12	New Mexico	6
Colorado	11	New York	28
Connecticut	5	North Carolina	54
Florida	94	North Dakota	11
Georgia	32	Ohio	11
Idaho	8	Pennsylvania	68
Illinois	98	Rhode Island	5
Indiana	5	South Carolina	22
Iowa	24	South Dakota	18
Louisiana	11	Tennessee	19
Maine	39	Texas	164
Maryland	1	Utah	12
Massachusetts	70	Vermont	8
Michigan	102	Virginia	11
Minnesota	43	West Virginia	3
Mississippi	27	Wisconsin	7
Montana	2		
Nebraska	12	Total	1,093

Theatres of Defendant Loew's, Incorporated, throughout the United States

(123) Theatres operated by Loew's, Incorporated, its subsidiary or associated companies, throughout the United States are as follows:

(a) Metropolitan DeLuxe Theatres:

City	No. of theatres	City	No. of theatres
Atlanta, Ga.	1	Newark, N. J.	1
Baltimore, Md.	1	New Haven, Conn.	2
Boston, Mass.	2	New Orleans, La.	1
Cleveland, Ohio	2	New York, N. Y.	2
Houston, Texas	1	St. Louis, Mo.	1
Indianapolis, Ind.	1	Washington, D. C.	2
Kansas City, Mo.	1	Brooklyn, N. Y.	1
Memphis, Tenn.	1		

constituting 20 theatres in 15 cities.

(b) Other theatres operated by defendant Loew's, Incorporated, its subsidiary or associated companies, indicated by States and number of theatres in each:

State	No. of theatres	State	No. of theatres
Connecticut	8	New Jersey	2
Delaware	1	Ohio	8
District of Columbia	1	Pennsylvania	3
Indiana	2	Rhode Island	1
Kentucky	1	Tennessee	1
Maryland	2	Virginia	2
Massachusetts	3		
New York	64	Total	99

Theatres operated by Defendant Radio-Keith-Orpheum Corporation throughout the United States

(124) Theatres operated by defendant Radio-Keith-Orpheum Corporation, or its subsidiary or associated companies, throughout the United States:

(a) Metropolitan DeLuxe Theatres:

City	No. of theatres	City	No. of theatres
New Orleans, La.	1	New York, N. Y.	2
Boston, Mass.	2	San Francisco, Calif. ..	2
Chicago, Ill.	1	Washington, D. C. ...	1
Cincinnati, Ohio	6	Brooklyn, N. Y.	1
Los Angeles, Calif. ..	2	Omaha, Nebr.	1

constituting 19 theatres in 10 cities.

(b) Other theatres operated by defendant Radio-Keith-Orpheum Corporation, its subsidiary and associated companies, indicated by States and number of theatres in each:

State	No. of theatres	State	No. of theatres
California	1	New Jersey	14
Illinois	2	Ohio	13
Iowa	6	Rhode Island	2
Massachusetts	3	West Virginia	3
Michigan	7		
New York	54	Total	105

Theatres of defendant Warner Bros. Pictures, Inc., throughout the United States

(125) Theatres operated by defendant Warner Bros. Pictures, Inc., its subsidiary or associated companies, throughout the United States are as follows:

(a) Metropolitan DeLuxe Theatres:

City	No. of theatres	City	No. of theatres
Baltimore, Md.	1	Newark, N. J.	2
Charlotte, N. C.	1	New Haven, Conn. ..	1
Los Angeles, Calif. ...	2	New York, N. Y.	1
Memphis, Tenn.	1	Philadelphia, Pa.	8
Milwaukee, Wis.	1	Washington, D. C. ...	2

constituting 20 theatres in 10 cities.

(b) Other theatres operated by defendant Warner Bros. Pictures, Inc., its subsidiary or associated companies, indicated by States and number of theatres in each:

State	No. of theatres	State	No. of theatres
California	10	New York	40
Connecticut	34	Ohio	34
Delaware	6	Oregon	2
District of Columbia	14	Pennsylvania	183
Illinois	19	Virginia	9
Indiana	3	Washington	3
Kentucky	8	West Virginia	11
Maryland	7	Wisconsin	18
Massachusetts	16		
New Jersey	90	Total	507

Theatres of defendant Twentieth Century-Fox Film Corporation throughout the United States

(126) The theatre holdings of Twentieth Century-Fox Film Corporation are operated through various subsidiaries, of which National Theatres Corporation, incorporated in the State of Delaware, is the holding company. Fifty-eight percent of the capital stock of National Theatres Corporation is owned and held by The Chase National Bank of the City of New York, and the remaining 42% by Twentieth Century-Fox Film Corporation.

Theatres operated by defendant National Theatres Corporation, its subsidiary or associated companies, throughout the United States are as follows:

(a) Metropolitan DeLuxe Theatres:

City	No. of theatres	City	No. of theatres
Denver, Colo	4	Portland, Oreg.	3
Los Angeles, Calif.	4	Seattle, Wash.	6
Milwaukee, Wis.	2		

constituting 19 theatres in 5 cities.

(b) Other theatres operated by defendant National Theatres Corporation, its subsidiary or affiliated companies, indicated by States and number of theatres in each:

State	No. of theatres	State	No. of theatres
Arizona	7	Nebraska	10
California	191	New Mexico	6
Colorado	32	Oregon	8
Idaho	9	Utah	2
Illinois	21	Washington	24
Iowa	6	Wisconsin	49
Kansas	56	Wyoming	14
Michigan	5		
Missouri	42	Total	499
Montana	17		

(127) In addition to the theatres operated by the defendant producer-exhibitors, as hereinbefore described, there exist additional theatres in practically every section of the United States which have been pooled by two or more of the said producer-exhibitor defendants, or in which they or two or more of them have joint interests pursuant to various operating arrangements or pooling agreements. The instances and locations in which such operating arrangements and pooling agreements have been entered into by the said producer-exhibitor defendants are too numerous to mention herein. However, examples of such operating arrangements or pooling agreements are cited as follows:

(a) *At St. Paul, Minnesota.*—A five-year pooling agreement dated June 26, 1936, between the Minnesota Amusement Company, an affiliate of the defendant producer-exhibitor Paramount Pictures, Inc., and St. Paul Theatres Company, an affiliate of the defendant Radio-Keith-Orpheum Corporation, which covers the operation in St. Paul, Minnesota, of three theatres of the Minnesota Amusement Company and one theatre of St. Paul Theatres Company.

(b) *At Pittsburgh, Pennsylvania.*—A three-year pooling agreement dated August 16, 1935, and amended August

14, 1936, between Stanley Company of America, an affiliate of the producer-exhibitor defendant Warner Bros. Pictures, Inc., and Penn Federal Corporation, in which the producer-exhibitor defendant Loew's, Incorporated, owns a substantial interest. This agreement covers the operation of the Stanley and Warner Theatres, owned by Stanley Company of America, and the Penn Theatre, under lease to Penn Federal Corporation. It also provides for keeping the Aldine Theatre, also under lease to Penn Federal Corporation, closed during the agreement.

(c) *At Cleveland, Ohio.*—A five-year pooling agreement, dated August 13, 1934, together with several amendments thereto, between General Theatres Company, an affiliate of the producer-exhibitor defendant Warner Bros. Pictures, Inc., and Keith-Ohio Corporation, an affiliate of the producer-exhibitor defendant Radio-Keith-Orpheum Corporation, relating to the operation of the Hippodrome and Lake Theatres operated by the Warner Bros. affiliate and the Palace and Allen Theatres operated by the Radio-Keith-Orpheum affiliate.

(128) A metropolitan first-run theatre cannot be successfully operated unless it has access to the product of one or more of the major companies, the defendants herein, on fair and reasonable terms.

(129) An independent producer cannot successfully produce motion pictures of the better quality unless access to the first-run metropolitan market is assured to him upon a fair, competitive basis.

(130) Statistics compiled by the United States Department of Commerce, show that the average weekly attend-

ance at moving picture theatres in the United States for the years 1922 to 1936, inclusive, is as follows:

1922	40,000,000	1930	110,000,000
1923	43,000,000	1931	75,000,000
1924	46,000,000	1932	60,000,000
1925	48,000,000	1933	60,000,000
1926	50,000,000	1934	70,000,000
1927	57,000,000	1935	80,000,000
1928	65,000,000	1936	88,000,000
1929	95,000,000		

(131) The estimated total gross box office receipts for these theatres for the years 1934-5-6 are as follows:

1934	$ 700,000,000
1935	720,000,000
1936	1,000,000,000

(132) As of January 1, 1937, 241,000 people were employed in the 16,258 theatres then operating.

(B) Competitive conditions in the industry

(133) The motion picture industry is dominated and controlled in all its branches by the defendants and their affiliated interests.

(1) Exhibition in affiliated first-run metropolitan theatres

(134) By reason of the ownership and control by the producer-exhibitor defendants of substantially all of the first-run theatres in metropolitan key cities throughout the country, an independent producer is unable to secure entrance to this vital first run market, except at the sufferance of one or more of the defendant major producer-exhibitors.

(135) Because of this control, the major producer-exhibitors are enabled to exclude, and do exclude, as a

general rule, all independent producers from the first run market.

(136) Of the feature pictures played in the first-run metropolitan houses of the defendant Warner Bros. Pictures, Inc., for the exhibition years 1934-35, 1935-36, and part of 1936-37, 95.54% were released by the major producers, defendants herein, or by their affiliated interests.

(137) Of the feature pictures played in the first-run metropolitan houses of the defendant Loew's, Incorporated, for the exhibition years 1934-35, 1935-36, and part of 1936-37, 99.22% were released by the major producers, defendants herein, or by their affiliated interests.

(138) Of the feature pictures played in the first-run metropolitan houses of the defendant Radio-Keith-Orpheum Corporation for the exhibition years 1934-35, 1935-36, and part of 1936-37, 95.59% were released by the major producers, defendants herein, or by their affiliated interests.

(139) Of the feature pictures played in the first-run metropolitan houses of the defendant National Theatres Corporation for the exhibition years 1934-35, 1935-36, and part of 1936-37, 94.89% were released by the major producers, defendants herein, or by their affiliated interests.

(140) Approximately similar percentages apply to the metropolitan first-run theatres operated by the defendant producer-exhibitor Paramount Pictures, Inc.

(141) As a result, the independent producer does not have access to a free, open and untrammeled first-run

market in metropolitan cities in which to dispose of his pictures. Entrance to this market by an independent producer is only at the sufferance of the defendants herein, who control it.

(142) A producer-exhibitor defendant, on the other hand, controlling its own first-run theatres, can, and usually does, exhibit pictures produced by it in its own theatres, no matter whether those pictures are good, bad, or indifferent. Access to the first-run market is thus secured by the producer-exhibitor defendants herein without the necessity of subjecting their pictures to competition with the pictures of any other producer.

(143) Screen time not used in the theatres of a producer-exhibitor defendant for the exhibition of its own pictures is usually filled in by the exhibition of pictures produced by either another producer-exhibitor defendant or by one of the producer-distributor defendants or released by the distributor defendant.

(144) In metropolitan first-run theatres feature pictures are usually exhibited at least a week, thus making the requirements of such a theatre about 52 pictures a year. Some of the producer-exhibitor defendants produce this many features in a year, but it is seldom that they use their own pictures exclusively during the course of any year.

(2) Exhibition in affiliated circuits

(145) The five producer-exhibitor defendants owning circuits of theatres, located generally in widely separated parts of the country, have entered upon a series of contracts, agreements, and franchises usually covering a year or more, whereby priority and preference are given to theatres affiliated with producer-exhibitor defendants in

the selection of the product of the other producer-exhibitor defendants or the producer-distributor defendants or released by the distributor defendant.

(146) As a general rule, under competitive conditions now existing in the industry, wherever affiliated theatres of the producer-exhibitor defendants come into competition with an independent exhibitor, the independent exhibitor is relegated to a secondary, inferior position. He is compelled to accept pictures for exhibition after the affiliated theatres are through with them, and usually subject to rental terms and conditions of availability, including clearance and zoning, that are harsh and arbitrary.

(147) Furthermore, the long-term franchises, agreements, contracts, and understandings, whereby prior rights and preferences are extended to each other by the producer-exhibitor defendants for the exhibition of their respective product in the theatres of the other, or others, generally contain provisions making said agreements applicable to after-acquired theatres as well as to theatres then in existence.

(148) As a result of provisions of this nature, a producer-exhibitor defendant is enabled to move into any new competitive area which appeals to it, even though that area is already served by independent exhibitors, and be assured of access to the product of the other major companies.

(149) Whenever a producer-exhibitor defendant moves into a territory served by an independent exhibi-

tor, such independent exhibitor is generally reduced to a second, third, or other subsequent run, no matter how long the independent theatre has served the community nor how good its facilities for serving the public may be.

(150) As a result of this monopolistic condition existing in areas where affiliated theatres operate, the independent exhibitor is deprived of access to a free, open, and untrammeled market in which he may buy product based upon his ability and willingness to pay fair and reasonable film rentals.

(3) Affiliated theatre market comfortably filled by product of defendants, to exclusion of independent producers

(151) Since the struggle for the acquisition of theatres by major producers commenced in 1919, the number of feature films released by the major companies has gradually decreased. To illustrate this gradual diminution of distribution of feature films, it is alleged that from 1916, the year in which the Motion Picture Patents Company was dissolved, until 1919 the distribution of feature films by all producers in the United States was as follows: 1916, 865; 1917, 1,046; 1918, 1,016; 1919, 815. From 1920 to 1923, distribution of feature films by all producers was as follows: 1920, 735; 1921, 830; 1922, 707; 1923, 527. In 1927, the major companies, the defendants herein, or their predecessors in interest, released 510 feature films; in 1936, 362. For the calendar years 1929 to 1936, inclusive, an average of approximately 352 feature films have been released annually by the said defendants.

(152) When it is considered that a large majority of the motion picture theatres in the United States, affiliated as well as independent, utilize double-feature programs

either as a general policy or sporadically during the year, the aggregate number of feature pictures released in recent years by the defendant companies is approximately enough to fill comfortably the screen time of affiliated theatres. Thus, under the existing arrangements among the defendants for the prior, preferential showing of their respective pictures in theatres of the producer-exhibitor defendants, each producer-exhibitor defendant is assured of a satisfactory selection of the pictures of the defendant companies for exhibition in its theatres.

(4) Loaning of players

(153) The assurance of a market for the product of the defendant companies in all parts of the country, through the theatre facilities of the producer-exhibitor defendants, has made possible a practice in the production of pictures whereby the defendants engaged in production are willing to, and do on frequent occasions, loan their most valuable assets, which include, among others, contract stars, writers, cameramen, directors, sets, and other facilities for the production of pictures, to other defendant producers.

(5) Marketing methods, overselling and overbuying

(154) In marketing films, the major distributors, defendants herein, first license their product, as a general rule, to the five major producer-exhibitor defendants or their respective affiliated theatres, either under long-term franchises or agreements of shorter duration, a great many of which franchises and agreements are selective in character. Next, films are licensed by said distributors, as a general rule, to large unaffiliated theatre chains in accordance with their size, extent, and buying power, for all the separate situations in which said chains operate theatres. Films are licensed to both affiliated and una-

ffiliated theatre chains, as a general rule, without regard to competitive conditions existing in the various separate areas in which they operate and without regard to the film rentals that smaller independent exhibitors would be willing to pay for films in such separate areas if they were given an opportunity to compete upon a local basis. As a result of this method of marketing, the smaller independent exhibitors are compelled to await subsequent runs in all situations occupied by chain theatres and until the said chain theatres have either utilized or rejected product available to them under their respective licensing agreements. Furthermore, in such situations the smaller independent exhibitors, being dependent upon the product of the major distributors for the successful operation of their theatres, are often compelled to pay film rentals to the said major distributors which are unconscionable and excessive as compared with the film rentals paid by theatre chains, affiliated or unaffiliated, for the same competitive areas. The difference between film rentals paid by small independent exhibitors in such situations and the film rentals paid by theatre chains for the same competitive areas as a rule bears no reasonable relationship to the difference in the cost of selling between the said small independent exhibitors and the said theatre chains.

(155) In selling to the larger chains, whether affiliated or unaffiliated, the defendants, as a rule make no effort to ascertain what the specific exhibition needs of such exhibitors may be in their various theatres, nor how many pictures of other producers said exhibitors may have placed under contract. This method of selling opens the door to overbuying on the part of unscrupulous exhibitors, and in many instances, permits them to overbuy

product for the purpose of keeping it away from competitors.

(156) Each instance where a distributor sells to an exhibitor who has already placed under contract sufficient product to meet his exhibition needs, constitutes an unreasonable restraint of trade, in that it keeps product from other exhibitors needing it. The exhibitor's needs cannot be met elsewhere, because, in the motion picture industry, there is a limited supply of the quality films.

(6) Refusal to sell second or other subsequent runs

(157) A further practice is prevalent in the industry whereby major distributors refuse to sell second or subsequent runs in small towns with a limited population, or in situations where it is felt that the selling of second or subsequent runs will injure first-run exhibition and detract from the gross returns sought to be derived from first-run accounts in the towns. This refusal is put upon the ground that large numbers of people in such communities would wait to see the pictures when played at a lower admission price at a later time. Protection, it is claimed, would not make amends for this alleged injury to first runs in such small communities. As a result of this practice, there are innumerable towns and communities throughout the country where the smaller exhibitors are willing and anxious to buy films but are unable to procure an adequate supply of them.

(7) Buyers' and sellers' markets in the motion picture industry

(158) Producers of motion pictures and their product, in the aggregate, constitute the market to which exhibitors must resort in buying (licensing) motion pic-

tures. On the other hand, motion picture theatres afford the ultimate market for the distribution and licensing of motion pictures. The distributor sells (licenses) to the exhibitor alone and to no one else. In this respect the motion picture industry is *sui generis* and not to be compared with industries dealing in consumable goods where the public itself and the people thereof provide the ultimate market.

(159) The producer-exhibitor defendants herein, acting singly and in combination as hereinafter described, through the integration of production and exhibition facilities of the industry, effectively control the most valuable markets for both the production and exhibition of motion pictures. Market control, whether by buyers or sellers, is incompatible with the free competition sought to be protected and preserved by the Sherman Anti-trust Act.

V. Interstate Commerce

(160) The defendants Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Twentieth Century-Fox Film Corporation, and Warner Bros. Pictures, Inc., are all engaged, either directly or through subsidiary or associated corporations, in the business of producing, distributing, and exhibiting motion pictures.

(161) The defendants Columbia Pictures Corporation and Universal Corporation are engaged, either directly or through subsidiary or associated corporations, in the business of producing and distributing motion pictures.

(162) The defendant United Artists Corporation is engaged in the business of distributing motion pictures.

(163) The business of producing motion pictures embraces the photographing of scenes on reels of celluloid film, said scenes having been prepared in advance by the assemblage, at the studios or upon location, of the necessary directors, actors, actresses, extra players, and other persons and facilities necessary to complete the scenes to be photographed. The personnel necessary to the production of a motion picture is usually assembled at the studios in California, where most of the pictures are made, and is drawn across State lines from all parts of the nation. Costumes and raw materials entering into the making of pictures, in many instances, are manufactured outside the State of California and shipped across State lines to the studios for use in production.

(164) Approximately 276 different industries, arts and professions are represented in the making of a single feature motion picture.

(165) Approximately two billion feet of negative stock celluloid film are used in the production of motion pictures annually, practically all of which is manufactured at plants located in the States of New York and New Jersey. Approximately 90% of the raw negative stock is shipped across State lines to the studios in California to be utilized in the production of motion pictures.

(166) After the scenes going to make up a motion picture have been photographed, they are developed, cut, fixed, edited and arranged at the studios in California.

Then the negatives are shipped to laboratories located principally in California, New York and New Jersey, where the required number of positive prints are made (usually between 50 and 250) to fulfill the contractual requirements for the picture in question. The positive prints so prepared are the motion picture films which are projected through motion picture projectors onto the screens of the motion picture theatres after having been shipped across State lines to the Film Exchanges maintained in the various exchange cities throughout the country.

(167) In the spring of each year producers of motion pictures announce their prospective programs for the coming exhibition season. This program describes the pictures to be produced, so far as known, giving their titles, the names of the stars and other featured players, the directors, and such other pertinent material as may be available. Plans are then made for the production and release of the plays upon the program, at approximately regular intervals throughout the exhibition season, which begins on September 1 of each year.

(168) When programs have been arranged and fixed, the producers proceed, through their salesmen, who work out of the film exchange cities, to solicit exhibitors to enter into license agreements covering exhibition of photoplays for the coming season in so far as such exhibition is free from commitments under long-term franchises or other agreements to others of the producer-exhibitor defendants herein. Each photoplay is copyrighted under the Copyright laws of the United States by the producer, and the solicited license agreements as signed by exhibitors are, by the terms thereof, usually transmitted to the

principal office of the producer, usually in New York, where such agreements are either approved or rejected by the producer.

(169) The positive prints, when prepared at the laboratories, are packed in tin boxes which, in turn, are placed in wooden cases, and said positive films, as completed, are from time to time shipped and transported from the laboratories where completed, across State lines to the various film exchanges throughout the country where they are utilized.

(170) Upon receipt of the motion picture films by the various exchanges, they are delivered to the various exhibitors who, under their license agreements with distributors, have the first or prior right to exhibit the respective films, and are then transported to the exhibitors having the next succeeding right to exhibit, and so on until all exhibitors who are to exhibit the photoplays have been served. Many shipments of films from exchange to exhibitor, and from exhibitor to exchange, cross State lines. When the films are worn out, they are shipped or returned to laboratories for scrapping; which shipments, as a rule, cross State lines, the final destination usually being New York City.

(171) Thus, in the course of producing, distributing and exhibiting motion pictures there is a constant, continuous stream of trade and commerce between the States, in and between the territories and the States of the United States, and with foreign nations, consisting of the solicitation and the making of contracts for the future delivery over periods of time of films to be produced

and delivered as hereinbefore described; the assemblage of personnel, property and material at the studios for the production of pictures; the transportation of negative films from the studios to the laboratories where positive prints of motion picture films are prepared, and from thence shipped to film exchanges throughout the United States; the continuous distribution of said films from the exchanges to and from motion picture theatres located in the areas served by the respective exchanges; the interchange of said films between each exchange and other exchanges of the same distributor located in other States of the United States or in the Territories thereof or in foreign countries; and, finally, the shipment of said films from said exchanges throughout the United States to points within the State of New York or elsewhere for scrapping.

(172) The activities of each branch of the motion picture industry are either in or directly affect trade and commerce among the several States.

VI. Offenses Charged

(173) The defendants, each well knowing all the matters and things hereinbefore alleged, for many years last past have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the production, distribution, and exhibition of motion pictures, and unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as afore-

said. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the production, distribution, and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

(A) Monopoly of exhibition in first-run metropolitan theatres

(174) The producer-exhibitor defendants herein, to wit, Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation, have integrated the principal production and exhibition facilities in the motion picture industry, and, having so integrated said facilities, have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the producer-distributor defendants and with the distributor defendant, to monopolize the market for the exhibition of motion pictures in first-run metropolitan theatres throughout the United States. The number of first-run metropolitan theatres owned, operated or controlled by each of the said producer-exhibitor defendants in thirty-six (36) selected key cities of the United States are set out in Paragraphs 122 to 126, inclusive, *supra*.

(175) Through the instrumentality of their respective first-run theatre holdings as aforesaid, coupled with the monopolization of the production of quality, high-class feature films distributed by all of the defendants, as hereinafter alleged, the said producer-exhibitor defendants, or their predecessors in interest, have been empowered to exclude, and have excluded, from said first-run

exhibition in said first-run motion picture theatres all other producers of pictures and their product for many years past, commencing at least as long ago as 1927.

(176) As alleged in paragraph 136, *supra,* in the first-run metropolitan theatres owned, controlled, or operated by the defendant Warner Bros. Pictures, Inc., for the exhibition seasons 1934-35, 1935-36, and for one-half of the season of 1936-37, 95.54% of the feature motion pictures exhibited therein were released by the eight parent companies, either directly or through subsidiary companies, and the remaining 4.46% were released by all other motion picture distributors, domestic and foreign.

(177) As alleged in paragraph 137, *supra,* in the first-run metropolitan theatres owned, controlled, or operated by the defendant Loew's, Incorporated, for the exhibition seasons 1934-35, 1935-36, and for one-half of the season of 1936-37, 99.22% of the feature motion pictures exhibited therein were released by the eight parent companies, either directly or through subsidiary companies, and the remaining 0.78% were released by all other motion picture distributors, domestic and foreign.

(178) As alleged in paragraph 138, *supra,* in the first-run metropolitan theatres owned, controlled, or operated by the defendant Radio-Keith-Orpheum Corporation, for the exhibition seasons 1934-35, 1935-36, and for one-half of the season of 1936-37, 95.59% of the feature motion pictures exhibited therein were released by the eight parent companies, either directly or through subsidiary companies, and the remaining 4.41% were released by all other motion picture distributors, domestic and foreign.

(179) As alleged in paragraph 139, *supra*, in the first-run metropolitan theatres owned, controlled, or operated by the defendant National Theatres Corporation, for the exhibition seasons 1934-35, 1935-36, and for one-half of the season of 1936-37, 94.89% of the feature motion pictures exhibited therein were released by the eight parent companies, either directly or through subsidiary companies, and the remaining 5.11% were released by all other motion picture distributors, domestic and foreign.

(180) Approximately the same percentages apply to the first-run metropolitan theatres owned, controlled, or operated by the defendant Paramount Pictures, Inc., for the exhibition seasons 1934-35, 1935-36, and for one-half of the season of 1936-37; that is to say, that of the feature photoplays exhibited first run in the metropolitan theatres of that defendant, approximately 95% thereof were released by the eight parent companies, defendants herein, or by their respective subsidiaries, and the remaining 5% were released by all other motion picture distributors, domestic and foreign.

(181) In addition to exhibiting their own product in their own theatres, each producer-exhibitor defendant has used, and generally uses, the product of other defendant companies in order to fill up and complete the surplus screen time in its theatres that is not consumed in the exhibition of motion pictures of its own production.

(182) Licenses for the exhibition of motion pictures produced by the defendants herein are created and provided for by innumerable agreements, contracts, and understandings either in the form of long-term franchises

or by contracts of shorter duration whereby the product of each defendant company herein is made available for exhibition in the first-run theatres of the producer-exhibitor defendants, to the exclusion generally of the motion pictures of all other producers, domestic or foreign.

(183) As a result of the monopolization, as aforesaid, of the market for the exhibition of motion pictures in first-run metropolitan theatres throughout the United States by the producer-exhibitor defendants as aforesaid, independent producers of motion pictures have been denied, and are generally denied, by producer-exhibitor defendants and each of them, all access to the market for the exhibition of pictures in first-run metropolitan theatres. First-run exhibition of feature films in first-run metropolitan theatres, as is alleged in paragraph 120, *supra*, is of the utmost importance to the producer for the successful exhibition and exploitation of motion pictures.

(184) As a result of the monopolization of the market for first-run exhibition of pictures in metropolitan theatres by the producer-exhibitor defendants, the independent producer has been and is excluded from access thereto except at the sufferance of the producer-exhibitor defendants, or one or more of them, and subject to terms dictated by them.

(185) The monopolization of the market for first-run exhibition of motion pictures throughout the United States has been brought about by the producer-exhibitor defendants herein through the instrumentality of ownership, operation, and control by the various producer-exhibitor defendants of substantially all of the first-run metropolitan

theatres throughout the country and as an instrumentality of monopolization such control of the exhibition branch of the industry, coupled with control of production by the producer-exhibitor defendants, or any of them, as hereinafter alleged, is illegal as violative of the Sherman Anti-Trust Act.

(B) Nationwide monopoly of exhibition by producer-exhibitor defendants

(186) In addition to the monopolization of the market for the exhibition of motion pictures in first-run metropolitan theatres, as hereinbefore alleged, the producer-exhibitor defendants have also attempted to monopolize, have monopolized, and have combined and conspired with each other and with the producer-distributor defendants and with the distributor defendant to monopolize, the first- or preferred-run exhibition of motion picture throughout the United States wherever any theatres affiliated with the producer-exhibitor defendants, or any one or more of them, operate or exist.

(187) As pointed out in paragraph 50, *supra*, the producer-exhibitor defendants, in acquiring circuits of affiliated theatres, have not gone into the same competitive areas to any appreciable extent, and then only in certain densely populated metropolitan areas where patronage is sufficient for all producer-exhibitor defendants operating in such areas. On the contrary, generally speaking, each producer-exhibitor defendant has gone into a territory, or territories, for the acquisition of theatres by it, not occupied by any of the other producer-exhibitor defendants. A statement of the affiliated theatre holdings of each of the producer-

exhibitor defendants throughout the United States, together with the location of the theatres of each, by States, appears in paragraphs 122 to 126, inclusive, *supra*.

(188) In the acquisition of theatres, each of the defendant producer-exhibitors has acquired one or more theatres through purchase, lease, or operating agreement from independent exhibitors. By reason of the power and position in the industry enjoyed by the said producer-exhibitor defendants, and each of them, and, as a result of their assurance of product for exhibition in those theatres, independent exhibitors, in some instances, have been compelled to sell or dispose of their theatres to the producer-exhibitor defendants, or some of them, as a result of coercive methods employed by the said producer-exhibitor defendants, or some of them. The said coercive methods so employed are sometimes referred to in the industry, particularly by independent exhibitors, as "distress methods." The said methods have included the following: threats of building a theatre, or theatres, in opposition to the independent exhibitor if he does not agree to sell; threats to deprive the independent exhibitor of product, or desirable product, if he does not agree to sell; the purchase of theatre sites in the neighborhood of the independent exhibitor, with the suggestion conveyed to the independent exhibitor, either directly or through third parties, that the major producer-exhibitor in question intends to build and open a theatre on the new site if the independent exhibitor will not agree to sell; threats to purchase an equity or interest in the independent theatre for the purpose of gaining control through reorganization or otherwise and the imposition upon the independent exhibitor of arbitrary and unreasonable clearance and zoning schedules. The occasions and

circumstances wherein and whereunder some or all of these methods have been used by the producer-exhibitor defendants, or some of them, are too numerous to mention herein, but have occurred in all sections of the United States.

(189) The acquisition of affiliated theatres in different sections and areas of the United States by the producer-exhibitor defendants has resulted in a division of territory between them, so that, in effect, each producer-exhibitor defendant, acting in combination with the other defendants herein, has an independent monopoly of the market for the first-run exhibition of motion pictures in the respective area, or areas, where each operates. The following table indicates the location of the theatres affiliated with the five producer-exhibitor defendants, arranged by States, excluding from the tabulation first-run metropolitan de luxe theatres:

Other Theatres than Metropolitan De Luxe Theatres

State	Paramount	Loew's	RKO	Warner's	Twentieth Century-Fox
Maine	39	....	....	....	....
New Hampshire	9	....	....	....	....
Vermont	8	....	....	....	....
Massachusetts	70	3	3	16	....
Connecticut	5	8	....	34	....
Rhode Island	5	1	2	....	....
New York	28	64	54	40	....
New Jersey	1	2	14	90	....
Pennsylvania	68	3	....	183	....
Delaware	....	1	....	6	....
Maryland	1	2	....	7	....
Dist. of Columbia	....	1	....	14	....
Virginia	11	2	....	9	....
West Virginia	3	....	3	11	....
North Carolina	54	....	....	....	....
South Carolina	22	....	....	....	....

Other Theatres than Metropolitan De Luxe Theatres—Continued

State	Paramount	Loew's	RKO	Warner's	Twentieth Century-Fox
Georgia	32	....	....	....	....
Florida	94	....	....	....	....
Alabama	34	....	....	....	....
Mississippi	27	....	....	....	....
Tennessee	19	1	....	....	....
Kentucky	....	1	....	8	....
Arkansas	12	....	....	....	....
Louisiana	11	....	....	....	....
Ohio	11	8	13	34	....
Indiana	5	2	....	3	....
Illinois	98	....	2	19	21
Michigan	[1] 102	....	7	....	5
Wisconsin	7	....	....	18	49
Minnesota	43	....	....	....	....
North Dakota	11	....	....	....	....
South Dakota	18	....	....	....	....
Iowa	24	....	6	....	6
Missouri	....	....	....	....	42
Kansas	....	....	....	....	56
Nebraska	12	....	....	....	10
Arizona	6	....	....	....	7
Colorado	11	....	....	....	32
Idaho	8	....	....	....	9
Montana	2	....	....	....	17
New Mexico	6	....	....	....	6
Utah	12	....	....	....	2
Wyoming	....	....	....	....	14
Texas	164	....	....	....	....
California	....	....	1	10	191
Oregon	....	....	....	2	8
Washington	....	....	....	3	24
Total	1,093	99	105	507	499

[1] Dual interest with RKO in 91 theatres.

(190) Aided by the monopolization of the production of the high-grade, quality feature films by the defendant producers, as hereinafter alleged, the producer-exhibitor de-

fendants have attempted to monopolize, and have monopolized, and combined and conspired to monopolize, the exhibition of motion pictures upon first or preferred runs in every section and through every area of the United States where the affiliated theatres of any of them exist or operate.

(191) The said monopolization is accomplished in pursuance of a common purpose, plan, and design whereby each producer-exhibitor defendant is given, in a particular area, or areas, where it owns, operates, or controls an affiliated theatre or an affiliated chain of theatres, priority and preference over all other exhibitors in the exhibition of motion pictures distributed not only by itself but also of motion pictures distributed by all other distributor defendants herein.

(192) The said common purpose, plan and design is carried out and accomplished through a system and series of franchises, contracts, agreements and understandings entered into severally by the defendants herein for the exhibition of the pictures produced by each of them as producers in the theatres operated by producer-exhibitor defendants as exhibitors in the various parts of the United States where each one operates or controls affiliated theatres. As a general rule, each producer-exhibitor defendant and also each producer-distributor, as well as the distributor defendant, reserves its respective motion pictures for licensing by the producer-exhibitor defendants until such time as such pictures as are desired by each and all of said producer-exhibitor defendants have been selected and exhibited.

(193) In the large metropolitan areas where two or more of the producer-exhibitor defendants operate affiliated theatres within the same competitive area, or areas, a con-

venient division of the motion pictures produced by the other defendants is usually arranged between the producer-exhibitor defendants operating within the same area, or areas. Such a division of product is commonly referred to in the industry as a "split" of product.

(194) As a result of the monopolization of the exhibition of the first or preferred runs of motion pictures by the producer-exhibitor defendants in affiliated theatres throughout the United States, as alleged, all independent exhibitors who operate a theatre, or theatres, or chains of theatres, in competition with the producer-exhibitor defendants, or any of them, are systematically excluded from the right to procure and opportunity to procure, or from attempting to procure, under fair competitive conditions, first or preferred run of high grade, quality films, a large portion of which are produced by the defendants herein, as hereinbefore set out.

(195) Furthermore, as a result of said monopolization, all independent exhibitors operating in competitive areas where affiliated theatres operate or exist are denied access to a free, open, and untrammeled market for the licensing of motion pictures for exhibition in their respective theatres.

(196) The franchises, contracts, agreements, or understandings, whereby the motion pictures produced by any and all of the defendants are first made available to affiliated theatres of the producer-exhibitor defendants, are negotiated, arranged, and executed by the several defendants herein before any of said pictures are made available to independent exhibitors upon any terms.

(197) As a result, in every area where an independent exhibitor is in competition with an affiliated theatre or an affiliated circuit of theatres, he is systematically relegated to a secondary, inferior position where he may only obtain product on second or other subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be willing to pay for pictures in a free, open, and untrammeled market.

(198) The monopolization of the exhibition of quality films on first or preferred runs in all sections of the United States where affiliated theatres operate or exist has been brought about by the producer-exhibitor defendants herein through the instrumentality of the ownership, operation and control of affiliated theatres, and as such instrumentality, as aforesaid, theatre ownership and control, coupled with the control of production by the producer-exhibitor defendants, or any of them as hereinafter alleged is illegal as violative of the Sherman Anti-Trust Act.

(C) Monopoly of production

(199) The producer defendants herein, to wit, Paramount Pictures, Inc., Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corporation, Columbia Pictures Corporation, and Universal Corporation, and their respective affiliated interests have attempted to monopolize, and have monopolized, and have combined and conspired to monopolize, the production and distribution of feature photoplays, and particularly feature photoplays of the better grade and quality, from the exhibition of which the greater part of the industry's revenue is derived.

(200) The said monopolization is accomplished in pursuance of a common purpose, plan and design whereby the said defendant producers, and each of them, place under contract, and for many years past have placed under contract most of the valuable stars, featured players, directors, technicians and others who have gained fame, prestige, renown, artistic, technical or other great value in the industry, and particularly in the production branch thereof.

(201) In recent years said personnel have been placed under contract in great numbers by one or the other of the aforesaid defendant producers; and, in some instances, certain of the said personnel have been placed under contract by more than one of the said defendants during the same periods of time.

(202) Said personnel, however, are seldom, if ever, placed or permitted to be placed under contract with an independent producer, nor are the services of said personnel available to said independent producers, as will be more fully set out hereinafter.

(203) For the exhibition years 1935-36, 1936-37, and 1937-38, the defendant producers placed under contract directors and players as follows:

(1) *Contract Directors*

Producer	1935-36	1936-37	1937-38
Columbia	10	10	12
Twentieth Century-Fox	16	17	20
Metro-Goldwyn-Mayer (Loew's)	23	17	20
Paramount	19	23	13
Radio-Keith-Orpheum	17	15	20
Universal	17	8	14
Warner	22	22	22

(2) *Contract Players*

Producer	1935-36	1936-37	1937-38
Columbia	34	43	53
Twentieth Century-Fox	60	69	85
Metro-Goldwyn-Mayer (Loew's)	72	87	90
Paramount	77	82	96
Radio-Keith-Orpheum	48	52	78
Universal	30	29	71
Warner	72	79	81

In addition, various types of technicians, such as writers and cameramen, were also placed under contract.

(204) These stars, featured players, directors and other technicians practically all of the artists who have gained prominence and favor in the industry.

(205) In recent years and in pursuance of the common plan, purpose and design heretofore referred to, the defendants herein and each of them, has inaugurated, and each of them has become a party to, a practice whereby the various stars, featured players, directors, and other technicians who have been placed under contract by the various defendant producers, are made available and loaned by the defendant producer to whom they are bound by contract, to another or other of the defendant producers for use in the production of pictures which are to be produced by the latter.

(206) Except as to defendants Warner Bros. Pictures, Inc., Loew's Incorporated, and Twentieth Century-Fox Film Corporation, the exact terms and conditions upon which said stars, featured players, directors, and

technicians are made available or loaned to each other are unknown to your petitioner. As a general rule, however, the defendant producer who loans a star or other person under contract to it does so under conditions whereby, among other things, the payment of the contract terms are assumed by the borrowing producer for the period during which the services of the borrowed star are required. Thus the burden of the contract obligations assumed by the various defendant producers in placing said stars, featured players, directors, and other technicians under contract is shared and divided, in fact and effect, by the other producing defendants who, in the manner described, avail themselves of the services of said stars, featured players, directors, and other technicians.

(207) Likewise, through the manner and method of exhibiting said pictures resulting from the use of borrowed personnel, the said defendant producers who are parties to said loaning and borrowing in each instance, as well as all the defendant producer-exhibitors, stand to participate in the divisions of the profits and returns which are realized from the exhibition of said pictures.

(208) The practice thus described, whereby the contract stars, featured players, directors, and technicians, as well as production sets and other studio equipment, of one defendant producer are made available to another defendant producer, constitutes both in law and in fact a pooling of the assets of the defendant producers who participate and have participated in this practice, contrary to and violative of the provisions of the Sherman Anti-Trust Act.

(209) It is alleged that the aforesaid practices of pooling stars, feature players, directors, and other technicians is an outgrowth from and is intimately connected with, in an economic way, the control of the production and exhibition branches of the industry by the defendant producer-exhibitors, as hereinbefore alleged, whereby the returns to be derived from the exhibition of pictures which result from the use of borrowed stars, featured players, directors, or other technicians, will be shared and enjoyed by all of the producer-exhibitor defendants.

(210) This is particularly true when it is remembered that there is a virtual division of exhibition territory in the United States between the said producer-exhibitor defendants, so that, as a result of this division of territory and the ownership and control of virtually all of the first-run metropolitan theatres, the greater the success that is realized at the box office from any picture produced through the use of borrowed stars, featured players, or other personnel, the greater will be the returns that are shared and enjoyed generally by the said defendant producer-exhibitors. And, futhermore, the greater the success of a picture produced by a producer defendant, not engaged in exhibition, through the use of borrowed personnel, the greater will be its share of the resulting profits under the usual methods of licensing films.

(211) As a rule, the independent producer is and has been systematically excluded from this practice and the benefits to be derived therefrom. The services of said stars, featured players, and other technicians have not been made available, nor permitted to be made available, to said independent producers, or any of them. As a re-

sult of the exclusion of the independent producer from the practice alleged, his opportunity and the possibilty of his producing feature photoplays of quality are rendered negligible.

(212) As a result of the monopolization of production, as hereinbefore described, by the defendant producers, the independent producers are denied access to a free, open, and untrammeled market in which they may strive to make feature photoplays of the finer grade and quality, and, for the most part, are driven to resort to and limit their activities and energies to the making of cheaper pictures having entrance to only a limited market which, for the most part, is unoccupied by affiliated theatres operated by producer-exhibitor defendants herein and in which only small admission prices and revenues are obtainable.

(213) Except for the monopolistic control of production and exhibition by the five producer-exhibitor defendants and their respective affiliated theatre interests, as hereinbefore alleged, the practice of pooling stars, featured players, directors and other technicians, as well as physical properties herein complained of would not take place, for the reason that in a free, open, and untrammeled market for the exhibition of pictures where every producer was compelled to engage in genuine competition with every other producer, the loaning of assets, as described would be directly opposed to the competitive interests of the producer, or producers, so loaning their assets.

(D) Trade practices imposed upon independent exhibitors

(214) By virtue of the power resulting from the attempts to monopolize, the monopolization, the combina-

tions and conspiracies to monopolize the interstate trade and commerce in motion pictures by the defendants herein, as hereinbefore alleged, and by reason of the dependence of affiliated exhibitors upon the motion pictures produced by the defendants herein for the successful operation of their respective theatres throughout the country, the said defendants have placed themselves in a position to impose and have imposed upon unaffiliated exhibitors throughout the United States a series of harsh, onerous, and unfair trade practices, each of which tends to restrain and does restrain and obstruct interstate trade and commerce in motion pictures in violation of the Sherman Anti-Trust Act. Among such trade practices so imposed are the following:

(1) *Block Booking.*—Block booking is a practice whereby unaffiliated or independent exhibitors are compelled to take blocks or groups of pictures in order to obtain any of them. Compulsory block booking, such as is enforced against the independent exhibitor, should not be confused with voluntary block booking whereunder a group or block of pictures is purchased as a result of a voluntary agreement freely entered into between distributor and exhibitor. Block booking is seldom, if ever, enforced by the producer-exhibitor defendants against each other. On the contrary, the exhibition contracts between and among the defendants herein are usually placed upon a selective basis, whereunder each defendant and its affiliated theatres may play such product or pictures of the other, or others, as it may select. In the case of the independent exhibitor, however, he is compelled to contract and pay for a whole block or group of pictures in order to obtain any of them which he may desire. This practice has the

effect of imposing upon the independent exhibitor a great number of pictures that are not desired by him, and tends to arbitrarily fill up and consume his screen time, thus preventing him from securing other pictures through other distributors.

(2) *Forcing of Short Subjects and Newsreels.* Forcing of short subjects and newsreels is a practice generally enforced only against the independent exhibitor, whereby he is compelled to license and pay for short subjects and news reels in order to procure desired feature photoplays, even though it is impossible for such independent exhibitor to utilize and exhibit such short subjects and news reels. This practice, as a rule, is never enforced by one of the major companies, the defendants herein, against another major company and its affiliated theatres.

(3) *Arbitrary Designation of Play Dates.*—This is a practice usually employed only against the independent exhibitor, whereby the major producer defendants herein, in selling to the exhibitor, compel him to play the films to be licensed upon designated play dates, usually the most desirable, such as Saturday, Sunday, or holidays. The independent exhibitor is forced to accept such arbitrary designation of preferred playing dates in order to obtain the product necessary to the operation of his theatre. The effect of this practice is to subject the managment of the independent exhibitor's theatre to the will of the producer and to relieve the exhibitor of his own judgment as to how his own theatre shall be operated. The independent exhibitor, as a result of this practice, is often compelled to operate his theatre in the interest of the distributor and contrary to his own best interests.

(4) *Protection.*—Thus a practice which includes clearance and zoning, by which first-run exhibition is given the protection of a period of time before the same picture may be played upon subsequent run. The producer-exhibitor defendants herein, in all areas where they or any of them own, control, or operate theatres, generally contract for the first-run exhibition of all feature pictures produced by any of them, and in the negotiation of said contracts the said defendants often impose upon the subsequent-run exhibitors arbitrary and unreasonable clearance and zoning schedules. As a result, the independent exhibitor, in many instances, is unable to exhibit feature photoplays until after their box office value is practically exhausted, and their novelty and freshness have worn off.

(5) *Overbuying.*— Through methods of distribution employed by the major distributor, defendants therein, exhibitors are permitted in many instances to contract for more films than can be legitimately displayed in their theatres. The said method of distribution employed by the defendants permit unscrupulous exhibitors to place more films under contract than can be properly displayed in their theatres under reasonable exhibition programs, with the result that thereby the said unscrupulous exhibitors are enabled to withhold product from other independent exhibitors who may need it for the operation of their theatres. If unused pictures are released for the use of others by such exhibitors, it is usually only after sufficient time has elapsed to diminish greatly their exhibition value.

(6) *Arbitrary, Unconscionable, and Discriminatory Film Rentals.*– Independent exhibitors as a result of their dependence upon the major producer defendants herein for

product, are, as a general rule, compelled to pay arbitrary, unconscionable, and discriminatory film rentals in order to procure licenses for the exhibition of pictures upon subsequent run which the competing affiliated theatres have played upon first run in the same competitive areas. In some instances the independent exhibitor has been compelled to pay four or five times as much, or even more, for the exhibition of film upon subsequent run as the major producer-exhibitor defendant paid for the same film on first run in the same competitive area. In order for the independent exhibitor to secure feature pictures produced by the major producer defendants herein, he is often compelled to license said pictures under exhibition contracts, the terms of which are based upon a percentage of the gross box office receipts derived from the exhibition thereof, with the right exacted by the major defendants to inspect the books of the exhibitor in order to verify the film rentals realized from such exhibition . In addition, a minimum license fee is frequently demanded, enabling the major distributor defendants to share the profits, if any, but not the losses. As a result, film rentals are determined in such cases not by what would be a fair return to the major distributor for its product, but, on the contrary, by the greatest amount that the independent exhibitor can possibly pay. Thus the major defendant distributors realize the principal financial benefit from such exhibition of their pictures, leaving the independent exhibitor with scarcely enough to keep their theatres open. The power which, under present conditions in the industry, has been thus vested in the major companies, the defendants herein, to impose arbitrary, unconscionable, and dicriminatory film rentals upon independent exhibitors, enables them, through the excercise of

that power in instances where they desire to use it, to drive such independent exhibitors out of the business.

(7) *Prohibition of Double Features.*—In exhibition contracts with independent exhibitors in various parts of the United States, provisions often are insisted upon by the major companies, the defendants herein, whereby said exhibitors are prevented from playing any of the feature films covered by said contracts as a part of double-feature programs. Such prohibitions are not insisted upon in the contracts of the defendants herein with each other, but, on the contrary, the practice of double-featuring is often encouraged in such cases and reduced film rentals are often given when pictures are exhibited as a part of double-feature programs in their own or affiliated theatres. The practice of seeking to prohibit the exhibition of films by indepedent exhibitors upon double-feature programs has heretofore been decreed to be illegal, as violative of the Federal antitrust laws by the Federal District Court for the Eastern District of Pennsylvania, and the decree was affirmed by the Circuit Court of Appeals for the Third Circuit.

(8) *Score Charges.*—The practice of imposing score charges upon exhibitors by the defendants herein originally grew out of the introduction of sound in motion pictures. Originally, sound came from a disc, or record, the playing of which was synchronized with the picture. A charge was made for the use of the disc, which came to be characterized as, or called, a "score charge." With the change made in sound whereby the sound track was superimposed on the celluloid film, the disc fell into disuse and was discarded. Nevertheless, the imposition of score charges upon exhibitors has been continued, and in reality amounts

to additional film rental under existing conditions. The score charge is not applied uniformly to both affiliated and independent exhibitors, but, on the contrary, the affiliated theatres pay the charges under about one-half of their contracts only, while the independent theatres are generally compelled to meet and pay said score charges in all situations.

(9) *Minimum admissions.*—In many instances the defendants herein, in negotiating contracts for the exhibition of their product fix, or attempt to fix, the minimum admission prices to be charged by the independent exhibitor, and in certain instances have agreed, in contracting with first or prior run exhibitors affiliated with one of the defendant exhibitors herein, to impose terms upon subsequent-run exhibitors which are harsh and unreasonable. As a result, the film has little, if any, exhibition value to the independent exhibitor.

(E) Benefits, favors, and advantages extended by the defendants to each other

(215) In addition to the above named trade practices imposed by the defendants upon independent exhibitors, the said defendants, in their dealings with each other, generally extend certain benefits, favors, and advantages which enable them to operate more profitably than the independents. The benefits, favors, and advantages thus extended also have the effect of consolidating in the defendants the control of production, distribution, and exhibition of motion pictures in interstate trade and commerce, hereinbefore described. Among the benefits, favors, and advantages generally extended by the defendants herein to each other are the following:

(1) *Sharing Advertising Costs.*—The box office value of feature films is increased greatly by various forms of advertising, which generally involve the expenditure of large sums of money. In many instances the contracts between the defendants as producers and other defendants as exhibitors provide that the advertising costs in the areas covered by such contracts, shall be borne partially by the producer. Such benefits are rarely, if ever, extended to indepedent exhibitors.

(2) *Optional Contracts.*—In dealing with each other, the defendants, or some of them, as producers and others of them as exhibitors frequently enter into contracts whereby the exhibitor is given the right and privilege to play certain specified feature photoplays, but without assuming any binding obligation to do so. This, in form, is a selective contract and provides for the exhibitor a wider selection of pictures without obligation to take them. Such benefits are seldom, if ever, extended to independent exhibitors.

(3) *Contract Modifications.*—In numerous instances material changes and alterations are made in contracts existing between the defendants, or some of them, as producers and others of them as exhibitors. Among the types of modifications thus allowed are the following:

(a) Reduction of film rentals where box office receipts upon the exhibition of pictures covered by the contract have been disappointing.

(b) Reduction in film rentals where pictures covered by the contract are double-featured.

(c) Reduction in film rentals where pictures covered by the contract are shown with vaudeville.

(d) Reduction in film rentals where pictures covered by the contract are shown in connection with a premium give-away, by which attendance at the theatre is encouraged.

(e) Changing pictures covered by a contract specifying percentage of box office revenue as rental, to a flat rental, so-called, which means a fixed rental designated in terms of dollars and cents.

(f) Elimination of pictures covered by contracts by repeating or extending the playing time of other pictures covered by the same contracts.

(g) Transference of pictures contracted for exhibition in one theatre to another theatre operated by the same defendant.

(h) Cancellation of pictures covered by a contract by reason of increased film rentals realized from other pictures covered by the same contract; in other words, where a picture exceeds expectations at the box office, the exhibitor is permitted to reduce his commitments for the exhibition of other pictures covered by the contract. The aforesaid privileges of contract modification are seldom, if ever, extended to the independent exhibitor.

(4) *Overage and Underage.*—This is a practice extended by the defendants, as producers, to others of the defendants as exhibitors, whereby the exhibitor defendants are permitted as to one theatre or group of theatres to play fewer pictures than the minimum contract commitment requires, and to charge the deficit thus created against pictures played in excess of the commitment relating to another theatre or group of theatres operated by the same defendant. This privilege is seldom, if ever, extended to the independent exhibitor.

(5) *Cancellation of Short Subjects.*—The defendants as exhibitors, are often permitted by other defendants, as producers, to cancel short subjects contracted for in instances where they enter into spot contracts for features pictures. This privilege is seldom, if ever, extended to the independent exhibitor.

(6) *Move-overs.*—A practice whereby the defendants, or some of them, as exhibitors, are permitted by other defendants, as producers, to move a picture from a theatre where its exhibition has been completed, to another theatre operated by the same defendant for a continued run or exhibition. This practice affects adversely the box office value of a picture when it reaches subsequent-run exhibitors. This practice is generally confined to metropolitan areas. This privilege is seldom, if ever, extended to the independent exhibitor.

VII.

Conclusion

(216) The petitioner's case is based, in part, upon the fundamental proposition that the free competition enjoined upon American industry by the Sherman Anti-Trust Act, and which competition is sought to be protected and preserved by that Act, demands the existence of free markets.

(217) Free competition means a free and open market among both buyers and sellers, in which the buyer does not control the seller and the seller does not control the buyer.

(218) An analysis of the motion picture industry, its component parts and its methods of transacting business,

demonstrates that the ultimate market, and the only market, in which motion pictures produced for entertainment purposes may be distributed and licensed is made up solely of the motion picture theatres of the United States.

(219) In soliciting the purchase of licenses for the exhibition of its pictures, the producer, through its salesmen, deals only with the owners or operators of motion picture theatres.

(220) Nothing tangible in form is delivered to the public or any of the persons comprising it. All that the public receives from the theatre owner or operator is an intangible article in the form of entertainment, for which an admission price is paid.

(221) The exhibition of a motion picture film may constitute only a part of the intangible theatre program, and that film, after exhibition, is returned to the producer's exchange for delivery to another exhibitor, who constitutes another part of the market, no matter how infinitesmal.

(222) In securing control of the motion picture theatres of the United States, particularly the first run metropolitan theatres, and the larger and better chains of theatres, coupled with production facilities, the defendant producer-exhibitors herein have effectually monopolized the market for motion pictures upon a nationwide scale and have drawn unto themselves the power of effectually excluding from that market both independent producers and independent exhibitors.

(223) As long as the most important markets for motion pictures are under the domination and control of any producer, or any group of producers, free, open, and untrammeled competition in the motion picture industry is impossible. It is equally destructive of free enterprise and free competition for any exhibitor or any group of exhibitors to dominate and control production. Control of theatres by the same interests which control production in the motion picture industry means the control of the market by the very elements which should compete for it.

(224) To compel all producers to acquire their own theatres in which to exhibit their own pictures or all theatres to acquire their own production facilities is an impracticability under any system of free competition and is to place upon the motion picture industry unreasonable standards of competition.

(225) In addition to the fact that the motion picture theatres of the United States constitute the ultimate market for the distribution and licensing of motion pictures, and wholly apart from that fact, under conditions as they exist today in the motion picture industry, the instrumentality of theatre ownership, domination and control has been utilized, and is being utilized, by the defendant producer-exhibitors herein as one of the means whereby they have achieved a monopoly, or monopolies, of the various branches of the industry, as hereinbefore described. Likewise the domination and control of production by any exhibitor or any group of exhibitors is destructive of free enterprise and free competition. As an instrumentality of monopolization, domination of production and exhibition

by the producer-exhibitor defendants or any of them is unlawful and is a violation of the Sherman Anti-Trust Act.

(226) Free competition can exist in the motion picture industry only when a condition is brought about wherein and whereunder all producers and distributors of motion pictures, on the one hand, large as well as small, are assured of a fair opportunity to sell their respective motion pictures on their merits in a free, open, and untrammeled market made up of motion picture theatres which are in no way dominated or controlled by any producer or distributor, or any group of producers or distributors, and wherein and whereunder all exhibitors, on the other hand, large as well as small, may compete in a free, open, and untrammeled market upon a fair and equitable basis for the product of all motion picture producers and distributors.

(227) The only way in which free competition may be restored to the motion picture industry is by the complete, permanent, and effectual separation of the production and exhibition branches of that industry, to the end that the ultimate markets of the industry shall be placed wholly beyond the domination and control of any producer or group of producers of motion pictures upon the one hand or of any exhibitor or any group of exhibitors of motion pictures upon the other hand.

VIII. Prayer

Wherefore, Petitioner prays:

(1) That the court issue its preliminary injunction restraining the defendants herein, and each of them, from

building, buying, leasing, or otherwise acquiring any additional theatres or any further interest, or interests, in any additional theatres, either directly or indirectly, through the acquisition thereof by subsidiary or associated corporations or otherwise, until the final decree herein or until the further order of this court.

(2) That the contracts, combinations, and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, be declared illegal and violative of the Act of Congress passed July 2, 1890.

(3) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of the respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies and all restraints of said interstate trade and commerce in the production, distribution, and exhibition of motion pictures described herein, and from entering into and carrying out, directly or indirectly, expressly or impliedly, any monopolies or restraints of interstate trade and commerce similar to those alleged herein to be illegal.

(4) That the integration of the production and exhibition branches of the industry by the producer-exhibitor defendants herein, and each of them, be declared to be unlawful as an instrumentality of monopoly and restraint

upon interstate trade and commerce, and violative of the Sherman Anti-Trust Act.

(5) That the defendants Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, and Warner Bros. Pictures, Inc., and each of them, both as producers and distributors of motion pictures, under the direction and supervision of the court be ordered and directed to divest themselves of all interest and ownership, both direct and indirect, in theatres and theatre holdings and that they, and each of them and their respective successors be permanently enjoined from acquiring directly or indirectly any other interests in the exhibition of motion pictures or in any persons, firms, or corporations which are engaged or may engage in the exhibition of motion pictures; said divestiture to be accomplished and carried out upon such terms and conditions as the court may deem proper, and that pending such divestiture the operation and management of said theatres and theatre holdings be placed in the hands of trustees to be selected by the court, who shall be entirely free from the control or domination of any producer or distributor of motion pictures.

(6) That the defendants Loew's, Incorporated, and Irving Trust Company, as Trustee in Bankruptcy for Radio-Keith-Orpheum Corporation, and each of them, as exhibitors of motion pictures, be ordered and directed to divest themselves of all interest, or interests, direct or indirect, in all persons, firms, or corporations engaged in the production or distribution of motion pictures, and that they; and each of them, and their respective successors, be per-

manently enjoined from acquiring directly or indirectly any other interests in the production or distribution of motion pictures or in any persons, firms, or corporations which are engaged or may engage in either the production or distribution of motion pictures; said divestiture to be accomplished and carried out upon such terms and conditions as the court may deem proper, and that pending such divestiture, the operation and management of said production interests be placed in the hands of Trustees to be selected by the court, who shall be entirely free from the control or domination of any exhibitor of motion pictures.

(7) That the producer defendants herein, and each of them, be permanently enjoined from borrowing, loaning, or otherwise making available their respective contract stars, featured players, or other technical personnel to any of the other defendants and from pooling their assets in the manner described herein, or in any other manner.

(8) That the defendants herein, and each of them, be permanently enjoined from enforcing upon independent exhibitors, or any of them, any and all of the unfair trade practices referred to and described in Paragraphs 214 and 215 of this petition.

(9) In order that the petitioner herein may obtain the relief to which it is justly entitled in the premises, may it please Your Honors to grant to it writs of subpoena directed to each of said defendants, commanding it, or him, to appear herein and answer upon oath the allegations contained in this petition and to abide by and perform such orders and decrees as the court may make in the premises.

(10) That the petitioner have such other and further relief as the court may deem proper.

(11) That the petitioner recover its costs herein.

UNITED STATES OF AMERICA,

By LAMAR HARDY,
United States Attorney for the Southern District of New York.

HOMER CUMMINGS,
Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

WENDELL BERGE,
JOHN J. ABT,
PAUL WILLIAMS,
J. STEPHEN DOYLE, JR.,
JOHN F. CLAGETT,
Special Assistants to the Attorney General.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Paul Williams, being duly sworn, says:

I am a Special Assistant to the Attorney General, and, as such, have been actively engaged in the conduct of the investigation and all other work on behalf of the petitioner in connection with this proceeding. I have read the petition herein and know the contents thereof, and am informed and verily believe that the allegations thereof are true.

The sources of my information and the grounds of my belief are statements and correspondence of the defendants and their officers and agents, and others, the statements and official reports of Government investigators, and other records, reports, and information relating to the motion picture industry in the possession of the Department of Justice.

PAUL WILLIAMS.

Sworn to and subscribed before me this the 19th day of July, 1938.

DOROTHY JOST,
Notary Public, District of Columbia.

My commission expires March 1, 1940.

Amended Complaint in *United States v. Paramount*

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 87-273

UNITED STATES OF AMERICA, PLAINTIFF

v.

PARAMOUNT PICTURES, INC.; PARAMOUNT FILM DISTRIBUTING CORPORATION; LOEW'S, INCORPORATED; RADIO-KEITH-ORPHEUM CORPORATION; RKO RADIO PICTURES, INC.; KEITH-ALBEE-ORPHEUM CORPORATION; RKO PROCTOR CORPORATION; RKO MIDWEST CORPORATION; WARNER BROS. PICTURES, INC.; VITAGRAPH, INC.; WARNER BROS. CIRCUIT MANAGEMENT CORPORATION; TWENTIETH CENTURY-FOX FILM CORPORATION; NATIONAL THEATRES CORPORATION; COLUMBIA PICTURES CORPORATION; SCREEN GEMS, INC.; COLUMBIA PICTURES OF LOUISIANA, INC.; UNIVERSAL CORPORATION; UNIVERSAL PICTURES COMPANY, INC.; UNIVERSAL FILM EXCHANGES, INC.; BIG U FILM EXCHANGE, INC.; AND UNITED ARTISTS CORPORATION, DEFENDANTS

AMENDED AND SUPPLEMENTAL COMPLAINT

Leave of Court having been first obtained, the United States of America, by its attorneys, acting under the direction of the Attorney General of the United States,

hereby amends and supplements the petition filed herein on July 20, 1938, and the bills of particulars filed pursuant thereto, by substituting therefor this amended and supplemental complaint against the following defendants:

Paramount Pictures Inc.; Paramount Film Distributing Corporation; Loew's, Incorporated; Radio-Keith-Orpheum Corporation; RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; RKO Proctor Corporation; RKO Midwest Corporation; Warner Bros. Pictures, Inc.; Vitagraph, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Screen Gems, Inc.; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Pictures Company, Inc.; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; United Artists Corporation,—defendant corporations, and for its complaint plaintiff alleges, upon information and belief, as follows:

I. Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," said Act being commonly known and hereafter referred to as the Sherman Act, against the above-named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2. The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts

to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several states and territories of the United States have been and are conceived, carried out and made effective, in part, within the Southern District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants

3. (a) Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Paramount Film Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

4. Loew's, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York,

New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

5. (a) Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

(b) RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution branch of the industry.

(c) Keith-Albee-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures. Approximately 99% of its common stock and 33% of its preferred stock are held by Radio-Keith-Orpheum Corporation.

(d) RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

(e) RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

6. (a) Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures.

(c) Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

7. (a) Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of busi-

ness at 444 West 56th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) National Theatres Corporation, approximately 42% of the capital stock of which is owned and controlled by Twentieth Century-Fox Film Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

8. The defendants described above in Paragraphs 1 to 7, inclusive, will be referred to sometimes hereinafter as "producer-exhibitor defendants."

9. (a) Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

(b) Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

(c) Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the business of distributing motion pictures.

10. (a) Universal Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

(b) Universal Pictures Company, Inc., a subsidiary controlled by Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing motion pictures.

(c) Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

(d) Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

11. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

12. All of the defendants hereinbefore described as engaged in distribution either directly or through subsidiaries, will be referred to sometimes hereinafter as the "distributor defendants."

13. All of the defendants hereinbefore described as engaged in production, either directly or through subsidiaries, will be referred to sometimes hereinafter as "producer defendants."

III. Definition of Terms

14. The following terms when used in this complaint have the meaning indicated:[1]

Production

15. (a) *Producer.*—Any person, partnership, association or corporation engaged in the production of motion pictures.

(b) *Major Producer.*—One which produces motion pictures for release by a major distributor[2] pursuant to a prior understanding or agreement with such major distributor.

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[1]For convenience, they have been grouped under headings describing the three principal branches of the industry: production, distribution and exhibition.

[2]For definition of major distributor see Paragraph 16 (b) below.

(c) *Independent Producer.*—One which is not a major producer.

(d) *Feature.*—Any motion picture, the length of the film of which is approximately five thousand feet (usually five reels) or more.

(e) *First Class Feature.*—A feature which grosses in excess of $400,000 in film rentals from exhibition within the United States.

(f) *Short Subject.*—A motion picture, the length of the film of which is less than five thousand feet (five reels), and is usually two or three thousand feet.

(g) *News Reel.*—A motion picture, the length of the film of which is less than five thousand feet and which portrays events of general current interest.

Distribution

16. (a) *Distributor.*—Any person, partnership, association or corporation engaged in the business of licensing motion pictures for exhibition and distributing the positive prints of such motion pictures to exhibitors.

(b) *Major Distributor.*—A distributor which is a defendant herein or is controlled by a defendant herein.

(c) *Independent Distributor.*—One which is not a major distributor.

(d) *State Rights Distributor.*—An independent distributor which does not operate a system of national exchanges but buys from an independent producer the exclusive right to distribute its pictures in a particular state or territory.

(e) *Exchange.*—An office maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

(f) *Franchise.*—A licensing agreement, or series of licensing agreements entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by the distributor during the entire period of the agreement.

(g) *Block Booking.*—The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license all or a majority of all of the features released by a distributor during a period of one year or more.

Exhibition

17. (a) *Exhibitor.*—Any person, partnership, association or corporation engaged in the operation of a theatre for the exhibition of motion pictures.

(b) *Affiliated Theatre.*—A theatre owned, controlled or managed by a major producer or distributor, or in the ownership, control or management of which a major producer or distributor has a financial interest.

(c) *Unaffiliated Theatre.*—One which is not an affiliated theatre.

(d) *Metropolitan Theatre.*—A theatre located in one of the following key cities: Albany, New York; Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Brooklyn, New York; Buffalo, New York; Charlotte, North Carolina; Chicago, Illinois; Cincinnati, Ohio; Cleveland, Ohio; Dallas, Texas; Denver, Colorado; Des Moines, Iowa; Detroit, Michigan; Houston, Texas; Indianapolis, Indiana; Kansas City, Missouri; Los Angeles, California; Memphis, Tennessee; Milwaukee, Wisconsin; Minneapolis, Minnesota; New Haven, Connecticut; New Orleans, Louisiana; New York, New York; Newark, New Jersey; Oklahoma City, Oklahoma; Omaha, Nebraska; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Portland, Oregon; San Francisco, California; St. Louis, Missouri; St. Paul, Minnesota; Salt Lake City, Utah; Seattle, Washington; Washington, District of Columbia.[3]

(e) *First Run Theatre.*—One which customarily exhibits the first-class feature pictures released by one or more major distributors on a first run showing in the city or town in which it is located.

(f) *Theatre Circuit.*—A group of more than five theatres owned, controlled or managed by the same person, partnership, or corporation; or a group of more than five theatres which combine with each other, through a common agent, in licensing film.

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[3]The cities listed above are a group in which certain statistical analyses of first-run exhibition have been made by the petitioner and the term metropolitan has been adopted as a convenient means of referring to theatres in these cities. They include the ten largest cities in the United States and all of the cities in which any of the defendants maintains an exchange. They are all key cities, as defined in Paragraph 17 (o) hereof. Brooklyn was treated as a separate city in the petitioner's analyses and is, therefore, referred to as such herein.

(g) *Circuit Theatre.*—Any theatre in a theatre circuit.

(h) *Independent Theatre.*—One which is not a circuit or affiliated theatre.

(i) *Motion Picture Season.*—The period from September 1 of one year to August 31 of the next.

(j) *Release.*—The act of making prints of a motion picture available for public exhibition in theatres.

(k) *National Release Date.*—The date upon which a motion picture is first released generally throughout the United States.

(l) *Trade Showing.*—A private exhibition of a film for the trade prior to national release.

(m) *Pre-Release.*—A public exhibition of a motion picture prior to national release.

(n) *Road Show.*—A public exhibition of a motion picture in advance of national release in a limited number of theatres at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

(o) *Key City.*—One of such size and strategic location that the first-run exhibition of a motion picture therein effectively advertises such motion picture among exhibitors and the public in a wide area surrounding such city.

(p) *First Run.*—The first exhibition of a motion picture in a given zone after national release.

(q) *Second Run.*—The exhibition of a motion picture in any zone next subsequent to its first run.

(r) *Repeat or Subsequent Run.*—Any exhibition of a motion picture in a zone subsequent to its first run.

(s) *Clearance.*—The period of time which must elapse between runs of the same picture within a particular area or in specified theatres.

(t) *Zone.*—A specified geographical area within which a particular clearance operates.

IV. Growth of the Defendants

A. *Paramount*[4]

18. Famous Players-Lasky Corporation (now known as Paramount Pictures Inc.) was organized by Mr. Adolph Zukor (Chairman of the Board of Paramount Pictures, Inc.) and Mr. Jesse L. Lasky and incorporated on July 19, 1916. The corporate name was changed to Paramount Famous Lasky Corporation on April 1, 1927 and on April 24, 1930 the name was changed to Paramount Publix Corporation.

19. In 1933 Paramount Publix Corporation was adjudicated a bankrupt in the United States District Court for the Southern District of New York. In June, 1935, it was reorganized under Section 77B of the Bankruptcy Act under the name of Paramount Pictures, Inc.

20. Twelve producing companies were merged with Famous Players-Lasky Corporation in 1917. At the same time the company integrated production and distribution by acquiring a national distribution system through merger

[4]The term "Paramount," as hereinafter used, includes all subsidiaries of the parent corporation, Paramount Pictures Inc.

with Artcraft Pictures Corporation and Paramount Pictures Corporation. Thereafter the company from time to time acquired interests in other producing and distributing companies.

21. At the present time pictures are produced by the parent company, Paramount Pictures, Inc., which is one of the principal producing companies in the industry. It maintains production facilities in Hollywood, California, and in New York and Long Island, New York. The following chart indicates Paramount's relative position in the industry with respect to pictures produced for the seasons mentioned:

Season	Features produced in industry	Features produced by Paramount	Season	Features produced in industry	Features produced by Paramount
1930-31	510	58	1935-36	517	50
1931-32	490	56	1936-37	535	41
1932-33	510	51	1937-38	450	40
1933-34	480	55	1938-39	526	58
1934-35	520	44			

22. Paramount Pictures Inc., also produces approximately 45 shorts and 104 news reels each season.

23. Paramount pictures are distributed directly by it and also by its wholly owned subsidiary, Paramount Film Distributing Corporation, through exchanges in 33 key cities. During the 1936-37 season Paramount distributed

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The term "subsidiaries" as used throughout this complaint includes all corporations in which the parent owns, directly or indirectly, a percentage of the voting stock sufficiently large to permit the exercise of substantial voting control, even though such percentage is less than 51% of the total voting stock.

59 features, 18 more than it produced, and ordinarily distributes each season a substantial number of features produced by others for release by it.

24. In 1919 Paramount entered upon a program of theatre acquisition. In that year it acquired stock interest in Southern Enterprises, Inc., which operated approximately 135 theatres in the South. In 1920 stock interest was acquired in New England Theatres, Inc., which operated approximately 50 theatres in the New England states. About 1926, Paramount acquired stock interest in the Butterfield Theatre Circuit, which operated approximately 70 theatres in Michigan. During the same year stock interest was acquired in Balaban and Katz Corporation, which operated approximately 50 theatres in Illinois. Theatres were also subsequently acquired in the West and Middle West through the acquisition of various theatres and of stock interests in various corporations operating theatre circuits.

25. The number and location of theatres now operated by Paramount are approximately as follows:

(a) First-run Metropolitan Theatres:

City	Number of theatres	City	Number of theatres
Atlanta, Ga.	4	Minneapolis, Minn.	6
Boston, Mass.	4	Newark, N. J.	1
Brooklyn, N. Y.	1	New Haven, Conn.	1
Charlotte, N. C.	3	New Orleans, La.	3
Chicago, Ill.	6	New York, N. Y.	1
Dallas, Texas	6	Omaha, Nebr.	3
Des Moines, Iowa	4	Salt Lake City, Utah	6
Detroit, Mich.	5	St. Paul, Minn.	4
Houston, Texas	3		
Memphis, Tenn.	2	Total	63

(b) Other theatres operated by Paramount are approximately as follows:

State	Number of theatres	State	Number of theatres
Alabama	33	New Hampshire	10
Arizona	8	New Jersey	2
Arkansas	47	New Mexico	7
California	4	New York	24
Colorado	9	North Carolina	66
Connecticut	5	North Dakota	10
Florida	109	Ohio	16
Georgia	34	Oklahoma	6
Idaho	9	Pennsylvania	72
Illinois	116	Rhode Island	3
Indiana	8	South Carolina	23
Iowa	60	South Dakota	20
Kentucky	11	Tennessee	26
Louisiana	17	Texas	199
Maine	39	Utah	15
Maryland	1	Vermont	8
Massachusetts	78	Virginia	17
Michigan	11	West Virginia	3
Minnesota	32	Wisconsin	5
Mississippi	35		
Missouri	1	Total	1,210
Nebraska	11		

26. The parent corporation, Paramount Pictures, Inc., has gross assets of approximately $90,000,000. Its consolidated gross income was in excess of $100,000,000 for the fiscal year ended in 1939.

B. *Loew's*[5]

27. In about the year 1905, the late Marcus Loew (who, before his death in 1927, was president of Loew's

[5]The term "Loew's," as hereinafter used, includes all subsidiaries of the parent corporation, Loew's, Incorporated.

Incorporated), in association with others, began to operate some so-called "penny arcades" in New York City and one in Cincinnati. Shortly thereafter, certain of these penny arcades were remodeled so as to permit, in part of the premises, the exhibition of single reel motion pictures, for which an admission price of 5¢ was charged. In 1907 the enterprise acquired its first theatre. It was located in Brooklyn, New York, and was operated with vaudeville and single reel pictures.

28. The motion picture subjects were bought by Mr. Loew from various picture producers and exhibited in the Loew theatres; the custom was to buy one print of each subject. By the year 1910, Mr. Loew and his associates owned stock interests in a number of corporations operating store shows and theatres in New York and elsewhere, all of them showing vaudeville and short-subject pictures.

29. In 1910, Mr. Loew and his associates organized Loew's Consolidated Enterprises, which, in 1911, was succeeded by Loew's Theatrical Enterprises.

30. Between 1911 and 1919, Loew's Theatrical Enterprises, through subsidiary corporations, extended its activities in the operation of theatres devoted to motion pictures or a combination of vaudeville and motion pictures. Additional theatres were acquired in New York City and in certain cities other than New York. By 1919, Loew's Theatrical Enterprises had financial interests in approximately 56 theatres.

31. In October 1919, Loew's, Incorporated, was organized, and acquired all of the outstanding stock of Loew's

Theatrical Enterprises. The extent of the theatre business of Loew's, Incorporated, has increased gradually since 1919.

32. The number and location of the theatres now operated by Loew's is approximately as follows:

(a) Metropolitan First-run Theatres:

City	Number of theatres	City	Number of theatres
Atlanta, Ga.	1	Newark, N. J.	1
Baltimore, Md.	1	New Haven, Conn.	2
Boston, Mass.	2	New Orleans, La.	1
Brooklyn, N. Y.	1	New York, N. Y.	2
Cleveland, Ohio	2	Pittsburgh, Pa.	1
Denver, Colo.	1	St. Louis, Mo.	1
Houston, Texas	1	San Francisco, Calif.	1
Indianapolis, Ind.	1	Washington, D. C.	3
Kansas City, Mo.	1		
Memphis, Tenn.	1	Total	24

(b) Other theatres are located as follows:

State	Number of theatres	State	Number of theatres
Connecticut	8	New Jersey	2
Delaware	1	Ohio	8
District of Columbia	1	Pennsylvania	2
Indiana	2	Rhode Island	1
Kentucky	1	Tennessee	1
Maryland	2	Virginia	2
Massachusetts	3		
New York	64	Total	98

33. In 1920, Loew's, Incorporated, entered the field of production and distribution of motion pictures by acquiring the outstanding stock of Metro Pictures Corporation. In 1924, Metro Pictures Corporation merged with Goldwyn Pictures Corporation under the name of Metro-Goldwyn Pictures Corporation. The result of this merger was that

Loew's, Incorporated, became the owner of all of the common stock of Metro-Goldwyn Pictures Corporation. At about the time of this merger, Louis B. Mayer Pictures, Inc., contracted to supervise the production of all pictures produced by the merged company, and turned over to Metro-Goldwyn Pictures Corporation certain of the assets of Louis B. Mayer Pictures, Inc. The business of Metro-Goldwyn Pictures Corporation was subsequently assumed by Metro-Goldwyn-Mayer Corporation. On December 31, 1937, Metro-Goldwyn-Mayer Corporation ceased to do business and the production activities were taken over by Loew's, Incorporated.

34. The following tabulation indicates the feature pictures produced by Loew's as compared with the total number of features produced, for the nine year period ending with the 1938-39 season:

Season	Features produced in industry	Features produced by Loew's	Season	Features produced in industry	Features produced by Loew's
1930-31	510	43	1935-36	517	43
1931-32	490	40	1936-37	535	40
1932-33	510	37	1937-38	450	41
1933-34	480	44	1938-39	526	51
1934-35	520	42			

35. For the eight year period ending with the 1937-38 season, Loew's produced an average of 36 short subjects per year.

36. Loew's product is distributed through exchanges maintained by it in 31 key cities. During the 1936-37 season Loew's distributed 50 features, 10 more than it pro-

duced, and ordinarily distributes each season a substantial number of features produced by others for release by it.

37. The parent corporation, Loew's, Incorporated, has gross assets of approximately $150,000,000. During the fiscal year ending in 1939, its gross income was in excess of $100,000,000.

C. *Fox*[6]

38. Twentieth Century-Fox Film Corporation was incorporated under the name of Fox Film Corporation on February 1, 1915. Fox Film Corporation was voluntarily reorganized with the consent of its creditors, and security holders in the summer of 1933. In August 1935, Fox Film Corporation acquired all the assets of Twentieth Century Pictures, Inc., a producing and distributing company, and the name of the company was changed to Twentieth Century-Fox Film Corporation.

39. The following chart indicates the feature pictures produced by Fox as compared with the total number of features produced for the nine year period ending with the 1938-39 season:

Season	Features produced in industry	Features produced by Fox	Season	Features produced in industry	Features produced by Fox
1930-31 ...	510	48	1935-36 ...	517	52
1931-32 ...	490	46	1936-37 ...	535	52
1932-33 ...	510	41	1937-38 ...	450	49
1933-34 ...	480	46	1938-39 ...	526	56
1934-35 ...	520	40			

[6]The term "Fox," as hereinafter used, includes all subsidiaries of Twentieth Century-Fox Film Corporation and of National Theatres Corporation.

40. Movietonews, Inc., a wholly owned Fox subsidiary, for the eight year period ending 1937-38, produced an average of 20 shorts and 104 news reels per year.

41. Fox product is distributed directly by Twentieth Century-Fox Film Corporation and Twentieth Century-Fox Distributing Corporation and Twentieth Century-Fox Corporation of Texas, wholly owned subsidiaries, through exchanges in 31 key cities. During the 1936-37 season Fox distributed 65 features, 13 more than it produced, and ordinarily distributes a substantial number of features produced by others for release by it.

42. In August 1925, Fox Film Corporation acquired approximately one-third of the common stock of West Coast Theatres, Inc., a company operating theatres in California and other western states; and, in March 1928, Fox Film Corporation purchased all the common stock of Wesco Corporation (now National Theatres Corporation), a holding company for theatre operating corporations.

43. In 1934, Wesco Corporation readjusted its capital structure by voluntary agreement among its creditors and stockholders, pursuant to which The Chase National Bank of the City of New York acquired 58% of the stock of Wesco Corporation and Fox Film Corporation retained 42%. At about the same time the Chase Bank acquired a substantial stock interest in Fox Film Corporation and still owns a substantial interest in Twentieth Century-Fox Film Corporation. The name of Wesco Corporation was thereafter changed to National Theatres Corporation and the Chase Bank still retains 58% of the stock of National Theatres Corporation. National Theatres Corporation oper-

ates theatres in the middle and far western parts of the United States through numerous subsidiary operating corporations.

44. In 1937, Twentieth Century-Fox Film Corporation acquired all the common stock of Roxy Theatre, Inc., which owns the Roxy Theatre, a large first-run theatre in New York City.

45. The location and number of theatres now operated by Fox is approximately as follows:

(a) Metropolitan first-run theatres:

City	Number of theatres	City	Number of theatres
Denver, Colo.	4	Portland, Ore.	4
Detroit, Mich.	1	San Francisco, Calif.	4
Kansas City, Mo.	3	Seattle, Wash.	5
Los Angeles, Calif.	5		
Milwaukee, Wis.	3	Total	30
New York City	1		

(b) Other theatres are located as follows:

State	Number of theatres	State	Number of theatres
Arizona	7	Nebraska	10
California	196	New Mexico	6
Colorado	32	Oregon	9
Idaho	9	Utah	2
Illinois	21	Washington	23
Iowa	6	Wisconsin	50
Kansas	56	Wyoming	14
Michigan	5		
Missouri	45	Total	508
Montana	17		

46. Twentieth Century-Fox Film Corporation has gross assets of approximately $60,000,000. During the fiscal year

ended in 1939, its consolidated gross income was approximately $50,000,000.

D. *Warner*[7]

47. Warner Bros. Pictures, Inc., was incorporated in 1923 for the purpose of producing, distributing, and exhibiting motion pictures. At that time, it owned and operated a motion picture studio in Hollywood, but had no theatres.

48. The Warner Company became interested in experimental work in the development of talking pictures, and, in August 1926, the first public performance of talking pictures was presented in the Warner Theatre in New York City.

49. Warner is one of the principal producing companies in the industry and maintains production facilities at Burbank and Hollywood, California, and Brooklyn, New York. The number of features produced by it as compared with the total number of features produced for the nine year period ending with the 1938-39 season is indicated by the following tabulation:

Season	Features produced in industry	Features produced by Warner	Season	Features produced in industry	Features produced by Warner
1930-31	510	69	1935-36	517	58
1931-32	490	56	1936-37	535	58
1932-33	510	53	1937-38	450	52
1933-34	480	63	1938-39	526	54
1934-35	520	51			

[7]The term "Warner," as hereinafter used, includes all subsidiaries of the parent corporation, Warner Bros. Pictures, Inc.

50. During the eight year period ending 1937-38 Warner produced an average of 102 short subjects per year.

51. In 1925 Warner Pictures, Inc. acquired Vitagraph, Inc., which operated 34 exchanges in the principal cities of the United States and Canada, and two other affiliated companies which operated exchanges in foreign countries. Warner product is distributed through Vitagraph, Inc. During the 1936-37 season Vitagraph distributed 60 features, 2 more than it produced, and ordinarily distributes some features each season produced by others for release by it.

52. Warner Bros. Pictures, Inc., entered the exhibition field in December 1924, when it acquired a theatre in Youngstown, Ohio. In 1925, it acquired 13 additional theatres in various parts of the United States. In December 1928, the corporation acquired a majority of the stock of Stanley Company of America, which operated, directly or through subsidiaries, 182 theatres and had partial stock interests in theatre companies that owned or leased 51 theatres. The theatres of the Stanley Company of America were located in the Middle Atlantic States and the District of Columbia.

53. Subsequently, the company acquired interests in theatres in Missouri, Pennsylvania, Maryland, New Jersey, Ohio, Connecticut, New York, Illinois, Wisconsin, Virginia, and Kentucky.

54. The approximate number and locations of theatres now operated by Warner are as follows:

(a) Metropolitan First-run theatres:

City	Number of theatres	City	Number of theatres
Albany, N. Y.	2	New Haven, Conn.	1
Baltimore, Md.	1	New York, N. Y.	2
Brooklyn, N. Y.	1	Oklahoma City, Okla.	7
Charlotte, N. C.	1	Philadelphia, Pa.	8
Cleveland, Ohio	2	Pittsburgh, Pa.	2
Los Angeles, Calif.	2	Washington, D. C.	2
Memphis, Tenn.	1		
Milwaukee, Wis.	1	Total	35
Newark, N. J.	2		

(b) Other theatres are located as follows:

State	Number of theatres	State	Number of theatres
California	10	Ohio	36
Connecticut	34	Oklahoma	7
Delaware	6	Oregon	2
District of Columbia	14	Pennsylvania	185
Illinois	19	Virginia	9
Indiana	3	Washington	3
Kentucky	8	West Virginia	11
Maryland	7	Wisconsin	18
Massachusetts	16		
New Jersey	90	Total	522
New York	44		

55. Warner Bros. Pictures, Inc., has gross assets of approximately $150,000,000. During the fiscal year ended 1939 its gross income exceeded $100,000,000.

E. *RKO*[8]

56. Radio-Keith-Orpheum Corporation was incorporated under the laws of the State of Maryland on October

[8]The term "RKO," as hereinafter used, includes all subsidiaries of Radio-Keith-Orpheum Corporation and Keith-Albee-Orpheum Corporation.

25, 1928. Since its incorporation it has been primarily a holding company for subsidiaries engaged in the production, distribution, and exhibition of motion pictures. Shortly after its organization, Radio-Keith-Orpheum Corporation secured control of its principal exhibition and production companies, Keith-Albee-Orpheum and FBO Productions, Inc., respectively.

57. Organized on January 28, 1928, as a Delaware corporation, Keith-Albee-Orpheum Corporation acquired, in February of the same year, all of the outstanding stock of B. F. Keith Corporation and approximately 90% of the outstanding stock of Orpheum Circuit, Inc. Subsidiaries of B. F. Keith Corporation owned and operated in various cities in the eastern part of the United States a large number of theatres which, although originally devoted to the performance of vaudeville, were converted and used for the exhibition of motion pictures. Orpheum Circuit, Inc., directly or through subsidiaries, operated theatres throughout the Midwest and Western parts of the United States.

58. In addition to Keith-Albee-Orpheum Corporation and Orpheum Circuit, Inc., Radio-Keith-Orpheum Corporation obtained the controlling interest in numerous other companies engaged in the motion picture exhibition business, the most important being RKO Proctor Corporation and RKO Midwest Corporation. RKO Proctor Corporation operated the Proctor circuit of theatres located in the New York metropolitan district and in up-state New York. RKO Midwest Corporation controlled a group of theatres in Ohio and Michigan.

59. The number and location of theatres now operated by RKO is approximately as follows:

(a) Metropolitan First-run theatres:

City	Number of theatres	City	Number of theatres
Albany, N. Y.	2	Newark, N. J.	2
Boston, Mass.	2	New Orleans, La.	1
Brooklyn, N. Y.	2	New York, N. Y.	1
Chicago, Ill.	1	Omaha, Nebr.	1
Cincinnati, Ohio	6	San Francisco, Calif.	1
Cleveland, Ohio	2	St. Paul, Minn.	2
Denver, Colo.	1	Washington, D. C.	1
Des Moines, Iowa	1		
Los Angeles, Calif.	2	Total	29
Minneapolis, Minn.	1		

(b) Other theatres are located as follows:

State	Number of theatres	State	Number of theatres
California	1	New Jersey	14
Illinois	2	Ohio	13
Iowa	5	Rhode Island	2
Massachusetts	3	West Virginia	3
Michigan	7		
New York	53	Total	103

60. The name of FBO Productions, Inc., the principal producing company absorbed by Radio-Keith-Orpheum Corporation, was ultimately changed to RKO Radio Pictures, Inc. RKO maintains production facilities in Hollywood and Culver City, California.

61. The number of features produced by RKO during the nine year period ending 1938-39 as compared with the total number of feature pictures produced during that period is indicated by the following chart:

Season	Features produced in industry	Features produced by RKO	Season	Features produced in industry	Features produced by RKO
1930-31 ...	510	32	1935-36 ...	517	43
1931-32 ...	490	48	1936-37 ...	535	39
1932-33 ...	510	45	1937-38 ...	450	41
1933-34 ...	480	40	1938-39 ...	526	49
1934-35 ...	520	40			

62. In January 1931, Radio-Keith-Orpheum Corporation took over, through subsidiaries, the news reel and other production business and facilities of Pathe Exchange, Inc.

63. For the eight year period ending 1937-38 RKO Radio Pictures, Inc. produced an average of 33 short subjects per year and the Van Beuren Corporation, a wholly owned subsidiary, produced an average of 48 short subjects per year. During the same period Pathe News, Inc., a wholly owned subsidiary, produced an average of 10 short subjects and 104 news reels per year.

64. RKO product is distributed by RKO Radio Pictures, Inc. through its exchanges located in 32 cities. During the 1936-37 season RKO distributed 47 features, 8 more than it produced, and ordinarily distributes a substantial number of features produced by others for release by it.

65. On January 27, 1933, Radio-Keith-Orpheum Corporation went into an equity receivership and Irving Trust Company was appointed Receiver. On June 8, 1934, Radio-Keith-Orpheum Corporation filed a petition for reorganization under Section 77B of the Bankruptcy Act in the United States District Court for the Southern District of New York. Irving Trust Company was appointed Trustee in reorganization. A plan of reorganization was approved

January 17, 1939, confirmed April 11, 1939, and such approval and confirmation were affirmed by the Circuit Court of Appeals for the Second Circuit on September 8, 1939.

66. The parent corporation has gross assets of approximately $70,000,000. During the fiscal year ended in 1939 its consolidated gross income was about $40,000,000.

F. *Columbia*[9]

67. Columbia Pictures Corporation was incorporated in the State of New York on January 10, 1924. Its organizers and, at that time, sole stockholders were Joe Brandt, Harry Cohn, and Jack Cohn. Commencing on February 4, 1925, with the acquisition of the assets of C. B. C. Film Sales Corporation, Columbia Pictures Corporation bought up exchanges throughout the country for the marketing of its product. By 1929, its distribution system was organized upon a national scale. In 1930, it secured exchanges for the foreign distribution of its film.

68. During 1928, Columbia acquired, through merger, Screen Snapshots, Inc., Hall Room Boys Photoplays, Inc., Starland Revue, Inc., all producers of short subjects, and in 1931 secured 50% and, in 1937, the remaining 50% of the capital stock of Screen Gems, Inc., also a producer of short subjects.

69. The following chart shows the number of features produced by Columbia, as compared with the total number of features produced during the nine year period ending with the 1938-39 season:

[9]The term "Columbia," as hereinafter used, includes all subsidiaries of the parent corporation, Columbia Pictures Corporation.

Season	Features produced in industry	Features produced by Columbia	Season	Features produced in industry	Features produced by Columbia
1930-31....	510	27	1935-36....	517	36
1931-32....	490	31	1936-37....	535	38
1932-33....	510	36	1937-38....	450	39
1933-34....	480	44	1938-39 ..	526	54
1934-35....	520	39			

70. During the eight year period ending 1937-38, Columbia Pictures Corporation produced an average of 39 short subjects and Screen Gems, Inc., produced an average of 22 short subjects per year.

71. Columbia product is distributed through its 32 exchanges located in key cities. During the 1936-37 season Columbia distributed 51 features, 13 more than it produced, and ordinarily distributes a substantial number of features produced by others for release by it.

72. The parent corporation has gross assets of approximately $15,000,000. During the fiscal year ended in 1939 its gross income was about $20,000,000.

G. *Universal*[10]

73. Universal Pictures Corporation, formerly Universal Film Manufacturing Company, was incorporated in New York, in 1912, and with its subsidiaries, engaged in the production and distribution of motion pictures in the United States and throughout the world.

[10]The term "Universal," as hereinafter used, includes all subsidiaries of the parent corporation, Universal Corporation.

74. Universal Pictures Company, Inc., was formed on January 10, 1925, and at approximately the same time purchased the entire outstanding capital stock of Universal Pictures Corporation. From 1925 to 1936, Universal Pictures Corporation was the production branch of its parent company, Universal Pictures Company, Inc. During such period, motion pictures produced by Universal Pictures Corporation were distributed by Universal Film Exchanges, Inc and Big U Film Exchange, Inc.

75. In April 1936, Universal Corporation was organized for the chief purpose of acquiring the controlling stock interest of Carl Laemmle and his associates in Universal Pictures Company, Inc., a producer, and Big U Film Exchange, a distributor of motion pictures.

76. The number of features produced by Universal, as compared with the total number of features produced during the nine year period ending 1938-39, is indicated by the following tabulation:

Season	Features Produced by Industry	Features Produced by Universal	Season	Features Produced by Industry	Features Produced by Universal
1930-31	510	22	1935-36	517	27
1931-32	490	32	1936-37	535	40
1932-33	510	28	1937-38	450	45
1933-34	480	38	1938-39	526	45
1934-35	520	39			

77. For the eight year period ending with the 1937-38 season, Universal produced an average of 111 short subjects and 104 news reels per year. During the 1936-37 season, Universal distributed 40 features, no more than it produced, but it ordinarily distributes each season some features produced by others for release by it.

78. In January 1926, Universal Pictures Corporation and its president, Carl Laemmle, secured a substantial stock interest in Universal Chain Theatres Corporation, which, through subsidiaries and affiliated companies, operated a large number of theatres. In 1928, Universal Chain Theatres Corporation and its affiliates operated about 315 theatres in Canada, the District of Columbia, and 20 States of the United States, including the Griffith Amusement Company circuit of 40 theatres in Oklahoma and Texas, and the Schine chain of 90 theatres in New York and Ohio. A substantial number of its theatres were disposed of between 1929 and 1931. It went into receivership in 1933, and its remaining theatres were sold by the receiver.

79. The dissolution of Universal Pictures Corporation in December 1936, was accompanied by a transfer of its assets to Universal Pictures Company, Inc. Since January 1, 1937, Universal Pictures Company, Inc., has been engaged in the production of motion pictures which are distributed in the United States by Big U Film Exchange, Inc., and Universal Film Exchanges, Inc.

80. Universal Pictures Company, Inc., has gross assets of approximately $12,000,000. During the fiscal year ended in 1939, its gross income was about $20,000,000.

H. *United Artists*[11]

81. United Artists Corporation was organized in 1919, by a group of individuals who had achieved prominence in the production branch of the motion picture industry.

[11]The term "United Artists," as hereinafter used, refers to the defendant, United Artists Corporation.

The purpose of the corporation was to distribute the features produced by its organizers.

82. Most of the features distributed by United Artists Corporation have been first-class features, although as a general rule it does not release as many pictures per year as the other major companies.

83. The following tabulation indicates the number of United Artists releases as compared with the total number of features produced during the nine year period ending 1938-39:

Season	Features produced in industry	Features released by United Artists	Season	Features produced in industry	Features released by United Artists
1930-31	510	13	1935-36	517	17
1931-32	490	14	1936-37	535	19
1932-33	510	16	1937-38	450	16
1933-34	480	20	1938-39	526	18
1934-35	520	19			

84. United Artists now distributes pictures for the following producers among others: Samuel Goldwyn, Charles Chaplin, Mary Pickford, Alexander Korda, and London Film Productions, Ltd., Selznick International, Edward Small, Sol Lesser, Hal Roach, David Loew, Ernest Lubitsch, Walter Wanger, and Richard Rowland.

85. United Artists maintains exchanges in 26 cities.

86. The corporation is owned by five stockholders, Charles Chaplin, Samuel Goldwyn, Mary Pickford, the Estate of Douglas Fairbanks, and Alexander Korda. It issues no public statement of gross assets or business

done but for the fiscal year ended in 1939 its gross income exceeded $10,000,000.

I. *Joint Theatre Interests*

87. Each of the producer-exhibitor defendants is jointly interested financially in one or more theatres with one or more of the other producer-exhibitor defendants, through profit sharing arrangements with respect to particular theatres; through so-called pools where several theatres owned or controlled by two or more are operated as a unit; through direct or indirect ownership of stock in a single theatre operating corporation by two or more of such defendants; or through arrangements where one owns or leases a theatre and the other manages it. Such joint interests include all of the following combinations with respect to one or more theatres: Fox with Loew's, Fox with Paramount, Fox with RKO, Fox with Warner, Loew's with Paramount, Loew's with RKO, Loew's with Warner, Paramount with RKO, Paramount with Warner and RKO with Warner.

88. There are about 200 theatres in the United States in which such joint interests are held, including a substantial number of metropolitan first-run theatres.

89. In addition to the foregoing joint theatre interests of the producer-exhibitor defendants with each other there are numerous other joint theatre interests where executive employees, or managing agents of one producer-exhibitor defendant have direct or indirect stock interests in a theatre operating corporation in which another producer-exhibitor defendant also owns a direct or indirect stock interest.

V. Competitive Conditions in the Motion Picture Industry

A. *Limited Source of Supply of Features and Particularly First Class Features.*

90. In the early stages of motion picture production films possessed entertainment value for the public merely because of the novelty of watching figures and objects in motion projected on a screen. They were priced by the foot or by the reel without regard to their quality as dramatic productions. As the novelty wore off, it became increasingly necessary to produce films which had stories of dramatic interest, employed well-known acting talent and eliminated technical faults in photography and projection.

91. By 1908 there were ten well established companies in the United States which were either producing or importing motion picture films and selling them to independent exchanges scattered throughout the country, but operated on a local basis. From these exchanges films were distributed weekly to exhibitors for a rental based on footage, although some attempts had been made to produce and market individually features of distinctive quality. At that time there were between 125 and 150 exchanges and 6,000 exhibitors in the United States.

92. In 1908, largely to escape the effects of a patent war conducted chiefly by the Edison companies, which held basic camera and projection equipment patents, the ten leading manufacturers decided to pool their interests and patents in the Motion Picture Patents Company. These companies were: Biograph Kalem, and Pathe, in

New York; Vitagraph in Brooklyn; Edison in New Jersey; Lubin in Philadelphia; and Essanay, Kleine, Meli and Selig in Chicago.

93. Each manufacturer took a license from the Patents Company entitling it to produce and lease motion pictures. By a system of licenses extending to distribution and exhibition, control of the entire industry was attempted. The licenses generally covered all branches of the industry, including cameras, film, and projectors.

94. The General Film Company was then organized to distribute the films of the ten producers on a national scale. Exchanges were either established by it or existing exchanges bought out. Other distributors had to secure the films of other producers in order to continue their business.

95. The Patents Company and the General Film Company were met by a militant group of producers, distributors, and exhibitors who operated without their licenses, and a number of law suits followed. Private suits for damages under the antitrust laws were instituted by them, and finally the Government instituted a suit in equity in 1912 which brought about the dissolution of the Motion Picture Patents Company by a decree dated January 24, 1916.

96. Meanwhile, the art of producing motion pictures had been going forward. The standardized film of one reel of 1,000 feet was rapidly displaced after 1912 by the feature picture of five reels or more. While the Motion Picture Patents company adhered to the idea of short, standardized films of one reel and a daily change of pro-

gram to be sold on a footage basis, others who had made a careful study of audience reaction were convinced that the time had arrived for further advances in production. Complete stories, plays, and books were translated into motion pictures. Among the early advocates of this change was Adolph Zukor, who formed the Famous Players Company in 1912, and produced "Queen Elizabeth," in which Sarah Bernhardt appeared, and soon "The Prisoner of Zenda," with James K. Hackett, a well-known actor, was produced.

97. From a position of comparative obscurity in 1912, Adolph Zukor and his Famous Players Company by 1916 had become the dominating influence in the industry. The feature pictures of this company were in demand the country over and were recognized generally as the best pictures on the market. A national distribution system had been secured through the acquisition of the control in that year of Paramount Pictures Corporation, which had been organized two years before by William W. Hodkinson, a San Francisco distributor.

98. The cost of making pictures had mounted abruptly, due principally to the rise in salaries of stars, directors, and technicians of all kinds. When these costs were passed on to the distributors and exhibitors, who had largely remained independent of producers, great alarm was felt by the persons engaged in these two branches of the industry, and resulted, in 1917, in the organization of First National Exhibitors Circuit, an association of exhibitors, which, through production and distribution units financed by its membership under a system of franchises, sought to assure its membership of a constant, satisfactory supply of pictures.

99. Many of the theatres in the new association were and had been customers of Famous Players. Thus the market for the pictures of that company was being threatened, and soon stars, feature players, directors and other personnel, were leaving the employ of Famous Players-Lasky for that of First National Exhibitors Circuit.

100. In 1919 Famous Players-Lasky Company began its acquisition of theatres as hereinbefore recited. By 1930, as hereinbefore recited, five of the major companies, Paramount, Loew's, Warner, Fox and RKO, had all developed nationwide businesses, in which production, distribution and exhibition were integrated. During the interim feature production costs had mounted steadily and the returns from their exhibition kept pace. This trend was accelerated in 1927 by the introduction of commercially profitable sound films which required costly equipment to produce, with the result that by 1930 the best features produced by each of these companies were costing as much as $500,000 or more each to produce.

101. By 1930 the eight defendant distributors were releasing substantially all of the features produced in the United States at a cost of more than $250,000 as they were the only ones which had the national distribution systems and established first-run outlets necessary to make the production of such features profitable. Since that date, they have continued to maintain complete control of the distribution of such features, although many of them have been produced by producers not employed by a major company but pursuant to arrangements made preceding the production of such films for release by a major distributor. Such arrangements generally included

the use of equipment owned by, or production talent under contract to, one or more of the defendants. These arrangements have often included financing of the production directly by the major distributor involved or the borrowing of capital by the producer upon its showing that it has been assured of release through a major distributor. Ordinarily, no funds have been or are available for this type of production in the absence of such an assurance.

102. As the equipment and technical and artistic talent necessary to produce profitable features became more costly, competition for the use of such talent became even more costly to producers; and since 1930 the major producers have preferred to loan and exchange the highest priced technical and artistic talent which they may have under exclusive contract to and with each other on standardized terms rather than drive the price of such talent higher by competing for the privilege of placing it under contract in the first instance.

103. The producer-exhibitor defendants have an additional incentive to pool their production resources arising out of the fact that each owns theatres which share the profits of successful features released by any of the others. Ordinarily, the major producers make available to each other their stars, feature players, directors and other personnel and their sets, scenery and other technical equipment necessary for the production of motion pictures while they do not readily make them available to independent producers. Even where such talent has been made available to independent producers, the terms have frequently been discriminatory as compared to the terms upon which it has been made available to major producers.

104. Since 1933 the number of instances in which stars, feature players, directors, writers, cameramen or other production talent under contract to a defendant has been loaned to another major producer as compared with loans to independent producers during the same period are approximately as follows:

Number of loans by defendants

Defendant	To major producers	To independent producers	Defendant	To major producers	To independent producers
Loew's	610	56	Fox	251	7
Paramount ..	439	46	Columbia ...	175	36
Warner	223	12	Universal ...	198	11
RKO	109	12			

105. Fox, Loew's, Paramount, RKO and Warner have collectively received during the past five years approximately 70 per cent of the total film rentals received by all distributors of motion pictures from exhibition in the United States, and Columbia, United Artists and Universal received about 25 per cent of such total film rentals. Fox, Loew's, Paramount, RKO and Warner have during each of said years collectively released about 80 per cent of all first-class features, and Columbia, United Artists and Universal have during each of said years released about 15 per cent of all first-class features. The first-class features represent those which have generally cost the most money to produce, have received the most intensive exploitation by distributors, have been successful in attracting patrons to theatres, and have yielded the largest gross box-office returns to exhibitors. No other distributor has released more than 1 per cent of such features during any of said years and in no year

have all other distributors combined released more than 5 per cent of such features.

B. *Block Booking and Blind Selling in Long Term Contracts*

106. In the early stages of motion picture distribution, the uniform quality of films and dependence by exhibitors on their novelty, rather than quality, to attract audiences, was well adapted to the method of licensing still employed in the industry. Then as now films were licensed sight unseen in large groups for delivery at weekly intervals over a period of a year or more.

107. License contracts today ordinarily contain the terms on which a group of features are to be exhibited over a period of at least one year. With the exception of United Artists, which usually makes a separate contract for the films released by each of its producers, the distributors cover in one license contract all of the features released during the one year period or a lesser number to be selected from all released, as and when released. The licenses are generally negotiated prior to the commencement of each motion picture season before any of the features covered have been released. The exhibitor has no knowledge of the quality or character of the features he licenses other than data concerning the stories, directors, stars and featured players, supplied as to some pictures by some of the distributors in prospectuses of the coming season's production program and the exhibitor's past experiences with similar productions. Such production programs are always subject to change without notice to any exhibitor and his license contract offers no protection

against loss which may result from the failure of the pictures produced to live up to the claims made for them as box-office attractions at the time they are sold.

108. The quality of feature pictures, as box-office attractions, varies widely even with respect to those released by the same company and they are accordingly priced in various brackets in the license agreement in accordance with anticipated quality. The feature released by any of the defendant distributors during any one season which is the most successful in attracting theatre audiences will ordinarily gross more than $1,000,000 in film rental and play in more than 10,000 theatres, in the United States, while the least successful feature will ordinarily gross less than $200,000 in film rental and play in less than 5,000 theatres, in the United States. The features assigned to the top price bracket in license agreements ordinarily have rental terms based upon a percentage of the box-office receipts, sometimes against a guaranteed figure, and those in the lowest price brackets are ordinarily licensed for a flat rental. The pictures in each bracket are usually untitled and unidentfied.[12] The result is that most features are not definitely allocated to a price bracket until after their release and the question of proper allocation is a continuous source of dispute between exhibitors and distributors.

109. Each distributor defendant releases each year a certain number of features (generally those in the lowest price brackets) which most exhibitors do not wish to ex-

[12]An example of such bracketing is as follows: Four features at 35%; six at 30%; ten at 25%; ten at $200.00 flat rental; and ten at $100.00 flat rental.

hibit at all. Therefore, in negotiating licenses, the distributor attempts to secure a commitment by the exhibitor to play all of the features released by it during the one year period with as small a cancellation or rejection privilege as possible and the exhibitor attempts to limit his commitment by either obtaining as wide a rejection or cancellation privilege as possible or sometimes by licensing a specific number of features, less than all released during such period. The extent to which the exhibitor is able to limit his commitments to those features which he thinks he can profitably exhibit depends upon the relative bargaining strength of the parties. In view of the limited supply of profitable features, a defendant distributor, in dealing with small independent exhibitors with limited buying power, is ordinarily able to compel the exhibitor to commit himself to play many features which he does not want and cannot profitably exhibit as a condition of licensing other features which he does want and can profitably exhibit. To the extent that such commitments are made, the market for films of other distributors which the exhibitor wants to play is correspondingly limited, and one result of the tying of unprofitable features to profitable features in the license contracts of the major distributors has been to prevent or discourage the entry into the market of independent producers and distributors. Another result of such block booking has been to encourage the production of features by the major companies which are not sufficiently attractive to be sold on their own merits but which may be successfully marketed by block booking them with other features of superior quality.

110. While the restrictive effect of such block booking is substantially lessened in the case of United Artists

by the employment of separate license agreements for each of its producers, most of which produce no more than four pictures a year, this defendant generally negotiates the licenses for all of its producers' pictures with the same exhibitor at the same time and sometimes conditions the sale of one producer's pictures upon the purchase by the exhibitor of the pictures of another producer which he does not desire to use.

111. In addition to the rental to be paid, the license contracts also ordinarily specify the run on which the features are available to the exhibitor, the clearance, if any, which his theatre shall have over competing theatres, and usually specify the minimum (adult and children, matinee and evening) admission prices to be charged by his theatre when exhibiting such features.

C. *Run, Clearance, and Minimum Admission Prices*

112. Although the entertainment value of the feature pictures released in the United States from week to week varies widely, theatre admission prices are generally uniform at a particular theatre regardless of the quality of the particular feature exhibited. Under the prevailing system of licensing features for a particular run for periods of a year or more with clearance at a specified minimum admission price, each theatre ordinarily plays all of the feature pictures it exhibits on the same run with the same clearance. All theatres which play features on the same run in the same competitive area ordinarily play them at the same admission price regardless of changing competitive conditions which might otherwise affect admission prices during the period of the license.

113. The incorporation of the foregoing provisions with respect to run, clearance and admission prices in annual licensing agreements and franchises, has tended to stabilize the playing positions and operating policies of particular theatres from year to year and the negotiation of license contracts with subsequent-run exhibitors is always subject to whatever rights have been established by license agreements with the prior-run exhibitors. Even where there are two or more theatres in a position to compete for the privilege of exhibiting the same features upon the same run, negotiations are seldom conducted simultaneously with the competing exhibitors for the licensing of pictures on such run. The distributor ordinarily negotiates the rental terms to be paid without any competitive bidding and only if an agreement is not reached with the exhibitor with whom negotiations for a certain run are started are negotiations undertaken with a competing exhibitor for that run.

114. In the very early years of the motion picture industry the age of films was not a significant factor. As films acquired plot content and as certain players became known to the motion picture public, however, it became important to exhibitors to show them as early as possible after release. Prior to the advent of the feature picture, films were licensed generally on the basis of age, with the license fee becoming smaller as the reel grew older. There was evolved during this period the concept of "run," which eventually displaced the earlier method of licensing pictures, and instead of licensing pictures one week old, two weeks old, etc., exhibitors licensed product on first run in a given territory, on second run in said territory a specified period of time after first run, on third

run in said territory a specified period of time after second run, etc. As the form of the motion picture developed from single reel to the feature picture and as certain players attained great popularity, motion picture theatres were able to command higher admission prices, and the operation of de-luxe first-run theatres in large cities charging a high admission price became feasible and profitable. From about 1915 or 1916, when the first of these de-luxe theatres, designed primarily for motion picture exhibition at advanced admission prices, were constructed, exhibitors operating such theatres sought to obtain and frequently did obtain long periods of protection over all other theatres in the city and surrounding territory where they were located.

115. From about 1915 to about 1931 it was frankly conceded by distributors and exhibitors generally that uniform runs and clearances were desirable, even though arrived at as the result of agreement between distributors, and many efforts were made to eliminate differences in the run and protection terms on which distributors dealt with theatres. During this period a number of contracts and franchise agreements provided in effect that the run and protection terms therein granted by a given distributor were to be the same as those granted to the theatre or theatres involved by other distributors.

116. In about 1930, after the producer-exhibitor defendants had substantially completed their theatre acquisition programs, they made a concerted effort to establish uniform zoning and protection plans throughout the United States through the Film Boards of Trade.[13] It

[13]Trade practice enforcement bodies located in each city where the defendants maintained exchanges.

was the purpose of these plans to establish in each exhibition territory a uniform plan of zoning and protection which would give a definite status to each theatre in the territory and which would prevent any distributor from dealing with such theatre with respect to run, zoning, or protection, on any terms other than those provided for in the plan. Such uniform zoning and protection plans, through agreements of the exhibitors and the distributors, were adopted for the 1930-31 season for the following cities: Charlotte, North Carolina; Detroit, Michigan; Los Angeles, California; Omaha, Nebraska; Salt Lake City, Utah; Denver, Colorado; Kansas City, Missouri; Milwaukee, Wisconsin; St. Louis, Missouri; San Francisco, California. There were also proposed and recommended by the local committees of the exhibitors and distributors and were awaiting acceptance by the home offices of the distributors in New York City, uniform zoning and protection plans for the 1930-31 season for the following cities: Albany, New York; Cincinnati, Ohio; New Orleans, Louisiana; Philadelphia, Pennsylvania; Buffalo, New York; Memphis, Tennessee; Oklahoma City, Oklahoma; and Washington, D. C. There were also under consideration for the 1930-31 season, by local committees, uniform zoning and protection plans for the following cities: Atlanta, Georgia; Chicago, Illinois; Des Moines, Iowa; Minneapolis and St. Paul, Minnesota; New York, New York; Portland, Oregon; Boston, Massachusetts; Cleveland, Ohio; Indianapolis, Indiana; New Haven, Connecticut; Pittsburgh, Pennsylvania; and Seattle, Washington.

117. In 1932 the United States District Court for the District of Nebraska[14] held that the Uniform Zoning

[14] *Youngclaus* v. *Omaha Film Board of Trade*, 60 F. (2d) 538.

and Protection Plan for the Omaha Distribution Territory was an agreement between distributors which restrained trade in violation of the Sherman Act. After the illegality of these uniform zoning and protection plans became apparent in 1932, the distributors refrained from employing any express agreements with each other with respect to uniform protection and zoning.

118. Another concerted effort was made to establish uniform zoning and protection plans under the code of the motion picture industry adopted pursuant to the National Industrial Recovery Act in December 1933. From that time until May 1935, when that Act was invalidated by the Supreme Court, efforts were made by local clearance and zoning committees throughout the country to establish uniform clearance and zoning plans. (It was at about this time that the term "clearance" was substituted in the industry for the term "protection" which had been used prior thereto.) Such a plan was actually arrived at in Los Angeles, California, and a modification of that plan is still in effect in that territory. Although such plans were under consideration in numerous other territories, the invalidation of the National Industrial Recovery Act prevented those plans from going into effect. Since May 1935, the industry has made no open effort to establish uniform clearance and zoning by express agreements between distributors.

119. Notwithstanding the disavowal by distributors of agreements between themselves with respect to uniform clearance and zoning schedules, such schedules are actually in effect in every exhibition territory in the United States. Many of these schedules were arrived at

by agreement before 1932 and have been carried forward since that time as a matter of tacit understanding and custom. Other uniform clearance and zoning schedules have developed as a result of pressure uniformly exerted by the dominant exhibitor in a zone upon all of the distributors. The dominant circuits in every exhibition area, whether they be affiliated or unaffiliated, in purchasing product generally request and secure the same runs and the same protections from all distributors with whom they deal and such terms are incorporated in express agreements with each such distributor. The result is a uniform system or plan of clearance which is embodied in a series of similar clearance schedules agreed to by the dominant exhibitors with each distributor rather than a single schedule.

120. Each distributor knows the run and clearance granted by every other distributor licensing the same theatres and knows that the effect of such uniformity is to freeze the playing positions and admission prices of all theatres in an area where such uniform schedules prevail.

D. *Long Term Franchises*

121. Generally, distributors enter into license agreements with exhibitors every season and most license agreements cover only a single season's output of pictures. In their dealings with circuits, however, both affiliated and unaffiliated, the distributors engage in the practice of entering into long-term franchises. These franchises are for periods varying from two years to twenty years, and they cover the exhibition of pictures released by a distributor during their term in the theatres

of the circuits with which they are made. The amount of film rentals involved in a single franchise has sometimes exceeded two million dollars and a single franchise has sometimes covered the terms of exhibition in more than five hundred theatres in widely separated localities.

122. Long-term franchises are generally advantageous to the circuits with which they are made. By virtue of the fact that the circuits have large buying power and pay to the distributors large sums of money, these franchises often discriminate against independent theatres whose buying power is small. These franchises generally give to the circuit theatres a selective choice of pictures and, regardless of changes in circumstances that may take place during the term of such a franchise, the circuit is permitted to tie up all the pictures or a substantial portion of the pictures released by the distributor while it is obligated to take only a selection of said pictures. By establishing the runs and protections with respect to all the theatres in the circuit, these franchises deny to other theatres, during their term, the opportunity to bid for or to license the runs of pictures covered by such a franchise in competition with the circuit theatres. Another effect of these long-term franchises is that they restrict the market for films independently produced and released. Many of these franchises do not contain all the terms and conditions pursuant to which pictures are licensed, but are simply agreements to enter into binding licenses at some future time.

123. Franchises generally provide for the exhibition of pictures in all of the theatres operated by the circuit involved, and some of them have even provided that addi-

tional theatres acquired by the circuit during the term of the franchise are to be included within its terms. Some of these franchises also provide that where a circuit has not exhibited all the pictures licensed in certain theatres, it may make up for this deficiency by exhibiting in other theatres more pictures than have been licensed for exhibition in such theatres. This practice is known as overage and underage. These franchises also confer advantages upon certain theatres by providing for reductions in film rentals where vaudeville performances are given and where double feature programs are used and also by providing that in certain situations advertising costs are to be paid by the distributor or shared between the distributor and the exhibitor. Rental terms in such franchises are frequently calculated in accordance with formulae which are based upon the net profits to the exhibitor, rather than gross receipts, from the exhibition of the feature picture involved and are in effect profit sharing agreements.

E. *Circuit Discrimination*

124. In licensing films to an exhibitor who owns or controls a number of theatres, such as a large circuit, the terms with respect to all of the circuit theatres are generally negotiated at the same time regardless of how many theatres there are in the circuit or where they are located. The exhibitor in negotiating such terms attempts to secure the most favorable terms for all of his theatres and in so doing frequently conditions the granting of certain terms in one theatre situation which he controls upon the granting of certain terms in another unrelated theatre situation which he also controls. In negotiating terms for

such a circuit, the distributor sometimes conditions the use of its films in certain competitive situations where the circuit needs the distributor's films upon the acceptance by the circuit of films which the circuit does not need in other competitive situations. The result is that an independent exhibitor, operating a single theatre in competition with a circuit is unable to compete for the privilege of licensing the distributor's films on the basis of what his theatre can offer as against the circuit theatre in immediate competition with him, but is frequently excluded from any consideration as a prior-run outlet for the distributor's films because of competitive conditions existing in an entirely different exhibition situation, over which the independent exhibitor has no control.

125. In licensing films to an affiliated circuit, the same procedure is followed as with respect to any other circuit except that the factor of affiliation introduces into the negotiations an inducement to discriminate in favor of affiliated theatres at the expense of unaffiliated theatres. A producer-exhibitor defendant, in negotiating for the licensing of films released by it for exhibition in theatres owned and controlled by another producer-exhibitor defendant, must take into consideration the terms demanded by the other producer-exhibitor in licensing its films for exhibition in theatres owned or controlled by such first producer-exhibitor. The granting of certain terms and privileges with respect to the exhibition of one producer-exhibitor defendant's films in another producer-exhibitor defendant's circuit is necessarily conditioned upon the granting of similar terms and privileges by the latter with respect to the exhibitions of its films in the circuit of the former.

F. *Control Over Exhibition Exercised by First-Run Exhibitors*

126. A number of prints of each feature, depending on the number of theatres to be served, are delivered to each exchange prior to national release date and delivered by the exchange to the various theatres which have licensed the film in accordance with the priority established by their contracts and returned to the exchange after each use. The picture is privately screened on or shortly after arrival for the benefit of the trade and particularly the exhibitors which hold first-run contracts. The contracts held by such exhibitors generally give them wide selective privileges which enable them to reject a substantial number of the features covered by their contracts after the picture has been screened for them. If the feature is accepted for first-run exhibition, it is exhibited in a first-run theatre and subsequently in the remaining theatres in accordance with their respective playing positions, established by the run designated in their respective license contracts. If it is rejected it is offered for license to other exhibitors operating first-run theatres or successively offered for license to exhibitors operating subsequent-run theatres in the order of the runs on which they play. As the first-run exhibitor not only has the opportunity to screen the picture but also frequently obtains reports on the box-office performances of the picture in key cities before making his selection, the pictures rejected are almost invariably inferior as box-office attractions to those selected.

127. Exhibitors holding first-run license contracts for the pictures released by one or more of the defendant

distributors ordinarily charge the highest admission prices in the towns or cities where such first-run theatres are located as their programs consist of selected features comprising the highest quality of available motion picture entertainment.

128. The first-run exhibitor is also usually required to charge the highest admission price as a condition of securing a given clearance over subsequent-run theatres. Subsequent-run theatres could not normally play a picture so profitably at the same admission price as the first-run in view of the fact that they must play it at a substantially later date after the capacity of the picture to attract an audience from the particular clearance zone has been partially exhausted by the first run. The same considerations generally compel a difference in admission prices corresponding to a difference in run and clearance for the same picture in all subsequent-run theatres. The result is that the entire admission price, run and clearance structure of the theatres in a given town or city is subject to run and clearance terms fixed in license agreements between the major distributors and first-run exhibitors, and the availability to subsequent-run exhibitors of the most profitable features is determined by the manner in which the first-run exhibitor exercises his selective privilege. In recognition of this fact the producer-exhibitor defendants have uniformly refrained from operating subsequent-run theatres in towns or cities where they do not operate first-run theatres.

G. *Local Exhibition Monopolies*

129. In the course of integrating the production and exhibition branches of the industry as heretofore recited,

the producer-exhibitor defendants have acquired control of a substantial number of local exhibition monopolies. In many instances they acquired circuits of theatres which had already established such a monopoly prior to affiliation and have maintained such monopolies. In either case these monopolies consist of receiving a substantial majority of the total theatre admission revenue in large communities, generally cities of more than one hundred thousand population, and paying a substantial majority of the total film rentals received by distributors from all theatres located in such a community. In such communities competing unaffiliated exhibitors operate only at the sufferance of the producer-exhibitor defendants and they can offer no substantial competition to affiliated exhibitors either with respect to the terms on which films are licensed or the terms on which they are exhibited to the public.

130. Such monopolies have been established and maintained by acquiring control of the first-run theatres or the theatres operating on the first and other early runs. By control of first-run theatres alone, affiliated exhibitors have been able to secure as much as two thirds of the total theatre admissions paid in cities as large as 250,000. This result is accomplished, in part, by maintaining a long clearance and substantial admission price differential between the first and subsequent runs. In larger cities, affiliated exhibitors have found it necessary to control the theatres operating in the first two or three runs in order to secure a similar proportion of the total available film revenue, but, in either case, clearance and runs have been so adjusted that few unaffiliated theatres, if any, have an opportunity to play a first-class picture until all or nearly

all of the affiliated theatres have exhibited it. A similiar pattern occurs with respect to affiliated exhibitor control over first and subsequent-run theatres and the distribution of total film revenue in a substantial majority of the cities of the United States with a population of 100,000 or more. In acquiring such film revenue monopolies the defendants have not generally found it necessary to acquire control of all the theatres most suitable for first and early run exhibition in such cities. By this control of the licensing of all first-class features they have been able to exclude such theatres from first or early run operation while in unaffiliated hands.

131. More than 80% of all the metropolitan first-run theatres[15] are affiliated theatres. More than 95% of the features exhibited in metropolitan first-run theatres are released by the distributor defendants. In the following metropolitan cities all of the first-run theatres are affiliated theatres:

Boston, Mass.
New Haven, Conn.
Albany, N. Y.
Brooklyn, N. Y.
Newark, N. J.
Philadelphia, Pa.
Washington, D. C.
Charlotte, N. C.
Memphis, Tenn.
New Orleans, La.
Houston, Texas
Dallas, Texas
Oklahoma City, Okla.

[15]For definition of a metropolitan theatre see Paragraph 17 (d).

Kansas City, Mo.
Cincinnati, Ohio
Cleveland, Ohio
Chicago, Ill.
Milwaukee, Wis.
Des Moines, Iowa
Minneapolis, Minn.
St. Paul, Minn.
Omaha, Nebr.
Salt Lake City, Utah

132. In only 4[16] of the 92 cities of the United States with populations of 100,000 and over are there no affiliated theatres. In 73 of the remaining 88, the producer-exhibitors operate enough first-run theatres in each to receive a substantial majority of the total theatre admissions paid in each of these cities. The five producer-exhibitors also own or operate one or more theatres in 200 of the 283 cities of population between 25,000 and 100,000.

VI. Interstate Commerce

133. The business of producing motion pictures embraces the photographing of scenes on reels of celluloid film, said scenes having been prepared in advance by the assemblage, at the studios or upon location, of the necessary directors, actors, actresses, extra players, and other persons and facilities necessary to complete the scenes to be photographed. The personnel necessary to the production of a motion picture is usually assembled at the studios in Cali-

[16]Tulsa, Oklahoma; Fall River, Massachusetts; Tacoma, Washington; and Fort Wayne, Indiana.

fornia, where most of the pictures are made, and costumes and raw materials entering into the making of pictures, in many instances, are manufactured outside the State of California and shipped across state lines to the studios for use in production.

134. Approximately two billion feet of negative stock celluloid film are used in the production of motion pictures annually, practically all of which is manufactured at plants located in the states of New York and New Jersey. Approximately 90% of the raw negative stock is shipped across state lines to the studios in California to be utilized in the production of motion pictures.

135. After the scenes going to make up a motion picture have been photographed, the film is developed, cut, fixed, edited and arranged at the studios in California. Then the negatives are shipped to laboratories located principally in California, New York and New Jersey, where the required number of positive prints are made (usually between 50 and 250) to fulfill the contractual requirements for the picture in question. The positive prints so prepared are the motion picture films which are projected in motion picture theatres, in most instances, after having been shipped across state lines to the film exchanges maintained in the various exchange cities throughout the country.

136. In the spring of each year, producers of motion pictures announce their prospective programs for the coming exhibition season. These programs describe the pictures to be produced, so far as known, giving their titles, the names of the stars and other featured players, the directors, and such other pertinent material as may be available.

Plans are then made for the production and release of the photoplays upon the program, at approximately regular intervals throughout the exhibition season, which begins on September 1 of each year.

137. When programs have been arranged and fixed, the distributors, through their salesmen, who work out of the exchanges, solicit exhibitors to enter into license agreements covering exhibition of photoplays for the coming season. Each photoplay is copyrighted under the Copyright Laws of the United States, and the solicited license agreements as signed by exhibitors are, by the terms thereof, usually transmitted to the principal office of the distributor, usually in New York, where such agreements are either approved or rejected.

138. The positive prints, when prepared at the laboratories, are packed in tin boxes which, in turn, are placed in wooden cases, and said positive films as completed, are from time to time shipped and transported from the laboratories where completed, across state lines to the various film exchanges throughout the country where they are utilized.

139. Upon receipt of the motion picture films by an exchange, they are delivered to the various exhibitors in the exchange territory, who, under their license agreements with distributors, have the first or prior right to exhibit the respective films, and are then returned to the exchange and transported to the exhibitors having the next succeeding right to exhibit, and so on until all exhibitors who are to exhibit the photoplays have been served, or transported directly from a prior-run theatre to a subse-

quent-run theatre. Many shipments of films from exchange to exhibitor, and from exhibitor to exchange, cross state lines. When the films are worn out, they are shipped or returned to laboratories for scrapping; which shipments, as a rule, cross state lines, the final destination usually being New York City.

140. Thus, in the course of producing, distributing and exhibiting motion pictures there is a constant, continuous stream of trade and commerce between the states, in and between the territories and the states of the United States, consisting of the solicitation and the making of contracts for the future delivery over periods of time of films to be produced and delivered as hereinbefore described; the assemblage of personnel, property and material at the studios or upon location for the production of pictures; the transportation of negative films from the studios to the laboratories where positive prints of motion picture films are prepared, and from there shipped to film exchanges throughout the United States; the continuous distribution of said films from the exchanges to and from motion picture theatres located in the areas served by the respective exchanges; the interchange of said films between each exchange and other exchanges of the same distributor located in other states of the United States or in the territories thereof and, finally, the shipment of said films from said exchanges throughout the United States to points within the State of New York or elsewhere for scrapping.

141. The activities of each branch of the motion picture industry are either in or directly affect trade and commerce among the several states.

VII. Offenses Charged

A. *Conspiracies to unreasonably restrain and monopolize the production, distribution and exhibition of motion pictures participated in by all of the distributor defendants*

142. All of the distributor defendants, each well knowing all the matters and things hereinbefore alleged, for many years last past, have combined and conspired with each other to unreasonably restrain, and pursuant to said combinations and conspiracies have in fact unreasonably restrained, trade and commerce in the production, distribution and exhibition of motion pictures in the United States, and have attempted to and have succeeded in monopolizing such trade and commerce in violation of Sections 1 and 2 of the Act of Congress, approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known and hereinafter referred to as the "Sherman Act," in the following manner:

143. By concertedly aiding and assisting in the loaning and exchanging of production personnel under contract to each major producer, and costly production equipment owned by each major producer, to and with other major producers on uniform, non-competitive terms.

144. By concertedly aiding and assisting the major producers to exclude independent producers from access to production personnel under contract to each major producer, and costly production equipment owned by each major producer, on the same terms on which they are made available to major producers.

145. By concertedly fixing license terms in contracts made before the licensees have had a fair opportunity to estimate the value and character of the films licensed and before such films have been completed or trade shown.

146. By concertedly fixing the run, clearance and minimum admission price terms on which an exhibitor may play features in license agreements covering periods of a year or more.

147. By concertedly conditioning the licensing of one film or group of films upon the licensing of another film or group of films.

148. By concertedly conditioning the licensing of films in one theatre or group of theatres upon the licensing of films in another theatre or group of theatres, which has no relationship to the first theatre or group of theatres other than common ownership or control or a common film buying agent.

149. By concertedly discriminating with respect to the license terms granted to theaters in large circuits because such theatres are a part of a circuit. The means of such discrimination most frequently employed with respect to such theatres are the following:

(a) *Run*

In areas where such theatres compete with independent theatres, the defendant distributors have offered to license feature pictures distributed by them to said theatres on a run ahead of said independent theatres, and only if said circuit theatres decline to license said product on said prior

run is that run offered to competing independent exhibitors. Said priority of run has ordinarily been continued from season to season, that is to say, the said defendants reserve a prior run for circuit theatres, and refuse to license feature pictures distributed by them on said prior run to independent exhibitors, even though said independent exhibitors request the prior run from one or more of the defendants before said defendants have agreed in writing to license their feature pictures for an approaching motion picture season on said prior run to competing circuit theatres. Feature pictures distributed by the defendants have been licensed to circuit theatres on prior runs, although competing independent theatres, by virtue of their location, seating capacity, equipment, appearance, and the amount of other product they already have under contract, are as suitable or more suitable than competing circuit theatres to exhibit the feature pictures requested on a prior run, and although they may offer and be in a position to pay a higher film rental for feature pictures than the competing circuit theatres. As a result, independent exhibitors operating in competition with circuit theatres have been and are systematically excluded from the opportunity to procure preferred runs of feature pictures distributed by the defendants in the localities in which circuit theatres operate. In many instances the defendant distributors have refused to license an independent exhibitor on any run at all in order to protect a circuit theatre from competition, regardless of how much clearance in favor of the circuit theatre the independent exhibitor is willing to submit to and regardless of what admission price he will charge or what rental he will pay.

(b) *Delivering prints*

In delivering prints for exhibition by independent exhibitors competing on the same run in the same exchange territory with such circuit theatre, the distributor defendants ordinarily serve the circuit theatre first if there is an insufficient number of prints available in the exchange to serve all theatres operating on the same run simultaneously and thus giving circuit theatres prior playing dates not provided for in their exhibition contracts.

(c) *Clearance*

The defendant distributors have granted such circuit theatres arbitrary and unreasonable clearance over competing independent theatres. In many instances such defendants have granted clearance to circuit theatres which serves no legitimate interest of the distributor. Such clearance is granted by the defendants solely at the insistence of said circuit theatres and for the purpose of aiding said circuit theatres to suppress the competition offered by independent theatres rather than to secure the most revenue for the distributor. As a result, independent theatres, in many instances, are unable to exhibit feature pictures until their novelty and freshness have worn off and their box office value has been seriously diminished, solely because earlier exhibition in the independent theatres would decrease the profits of a circuit exhibitor.

(d) *Minimum admission prices*

In many instances each distributor defendant has agreed with such circuit theatres to require independent theatres exhibiting their feature pictures on a run subsequent to that of the circuit theatre, to charge a minimum admission

price for such exhibition so high that such subsequent run independent theatres cannot operate successfully.

(e) *Prohibition of double features on subsequent runs*

In many instances each defendant distributor has agreed with such circuit theatres to prevent independent theatres exhibiting their feature pictures on a run subsequent to that at a circuit theatre from exhibiting, as part of a double feature program, feature pictures which have been exhibited at the circuit theatre.

(f) *Selectivity of deals*

In contracting with such a circuit of theatres, each defendant distributor ordinarily gives it the right to select a certain number of the feature pictures released by it each season for exhibition at the circuit's theatres. In contracting with independent theatres, however, each such defendant has ordinarily refused to license any of its product unless the independent exhibitor contracts for all of the feature pictures released by it. Or, in the event that independent exhibitors are granted selective privileges in licensing pictures, the selection granted to them has ordinarily not been as great as that granted to competing circuit theatres.

(g) *Designation of play dates*

In many instances each distributor defendant, in licensing feature pictures to independent exhibitors, requires that certain pictures be exhibited upon designated days or reserves the privilege of designating the days on which a certain number of the feature pictures licensed should be exhibited. Ordinarily, each such defendant designates that

such feature pictures be played on the most desirable days in the week from the standpoint of attracting patronage, that is, Saturdays, Sundays or holidays, and ordinarily the feature pictures which are designated to be played on such preferred days are ones which the exhibitor has licensed on percentage terms. The independent exhibitor is forced to accept such designation of play dates in order to obtain the product necessary for the operation of his theatre. Although each distributor may require such circuit theatres to play certain pictures on designated days, the number of pictures designated by each distributor to be so played by circuit theatres is usually not as great as the number designated to be so played by independent exhibitors.

(h) *Forcing of short subjects, news reels, trailers, serials, reissues, westerns and foreigns*

In many instances each defendant distributor has refused to license its feature pictures to independent exhibitors unless they also agree to license and pay for the short subjects, news reels, trailers, serials, reissues, western and foreigns released by that defendant, even though the independent exhibitor does not wish to license such additional films and has no need for them. This practice is usually not enforced against such circuit theatres.

(i) *Film rentals*

In many instances, each distributor defendant has required independent theatres to pay higher film rentals for the exhibition of feature pictures on a given run than it requires of such circuit theatres, and in many instances independent exhibitors are required to pay as much or more

for the exhibition of feature pictures on a subsequent run as circuit theatres pay for the exhibition of the same feature pictures on a prior run. Moreover, independent exhibitors are required to play a greater number of pictures on percentage terms than are such circuit theatres and the latter theatres are permitted to pay flat rentals for many pictures played by independent exhibitors on a percentage basis. Independent exhibitors are also required to play more percentage pictures with a minimum guaranteed film rental than are such circuit theatres.

(j) *Advertising allowances*

In many instances each distributor defendant, in licensing feature pictures to such a circuit of theatres, agrees to pay the cost of advertising such pictures or share it with the circuit. The defendants seldom, if ever, agree with independent exhibitors to pay for or share advertising costs.

(k) *Score charges*

Independent exhibitors are required by each defendant distributor to pay score charges[17] on practically every picture which they exhibit, while such circuit theatres seldom, if ever, are required to pay score charges on more than half of the pictures which they play.

(l) *Optional contracts*

In many instances each defendant distributor gives such circuit theatres the privilege or option of playing certain

[17]Originally, sound came from a disc or record, the playing of which was synchronized with the picture. A charge was made for the use of the disc, which came to be called a "score charge." As sound developed, the sound track was superimposed on the film and the disc was discarded. Nevertheless, distributors continued to require the payment of score charges which in reality amount to additional film rental.

specified features without assuming any binding obligation to do so. This is in reality a selective contract which gives such circuit theatres wide choice in regard to the pictures which they exhibit. Such benefits are seldom, if ever, extended to independent exhibitors.

(m) *Contract modifications*

In many instances each defendant distributor permits material changes and alterations in its contracts with such circuit theatres. Seldom, if ever, are such modifications made by the defendant distributors in their contracts with independent exhibitors, and in the cases where they are made, the modifications are much more limited than when the contract is with such a circuit of theatres. Among the types of modifications made in contracts with such circuit theatres are the following:

1. Reduction of film rentals where box-office receipts upon the exhibition of pictures covered by the contract have been disappointing.

2. Reduction in film rentals where pictures covered by the contract are double-featured.

3. Reduction in film rentals where pictures covered by the contract are shown with vaudeville.

4. Reduction in film rentals where pictures covered by the contract are shown in connection with a premium give-away, by which attendance at the theatre is encouraged.

5. Changing pictures covered by a contract specifying percentage of box-office revenue as rental, to a flat rental, so-called, which means a fixed rental designated in terms of dollars and cents.

6. Elimination of pictures covered by contracts by repeating or extending the playing time of other pictures covered by the same contracts.

7. Transfer of pictures under contract for exhibition at one circuit theatre to another theatre operated by the same circuit.

8. Cancellation of some of the pictures covered by a contract when other pictures are more successful at the box office than the distributor and circuit theatre have anticipated.

(n) *Overage and underage*

In many instances each defendant distributor permits such a circuit of theatres to play fewer pictures in one of its theatres than the contract requires, and to charge the deficit thus created against pictures played in another one of its theatres in excess of the commitment of such theatre. This privilege is seldom, if ever, extended to independent exhibitors.

(o) *Move-overs*

In many instances such a circuit of theatres is permitted by each of the defendant distributors to move a picture from one of its theatres where its exhibition has been completed to another theatre operated by the same circuit for a continued run or exhibition. This practice, which is generally confined to metropolitan areas, reduces the box-office value of a picture when it reaches subsequent-run exhibitors. This privilege is seldom, if ever, extended to independent exhibitors.

(p) *Overbuying*

In many instances such a circuit of theatres is knowingly permitted by the defendants to contract for the exhibition in certain theatres operated by it of more films than such theatres can profitably exhibit for the purpose of withholding such films from competing independent exhibitors who need them in order to operate their theatres. Many pictures so licensed by such circuit theatres are never exhibited by them because of their lack of screen-time to play them, and yet they are released to competing independent exhibitors, if at all, only after the elapse of such a length of time after their release that their exhibition value has been substantially diminished. In other cases, the circuit theatres actually exhibit all of the pictures licensed by them by following a policy of making a greater number of weekly program changes than are necessary to meet the entertainment requirements of their patrons.

B. *Conspiracies to unreasonably restrain and monopolize the exhibition of motion pictures participated in by the producer-exhibitor defendants*

150. All of the producer-exhibitor defendants, each well knowing all of the matters and things hereinbefore alleged, for many years last past, have combined and conspired with each other to unreasonably restrain and monopolize and pursuant to said combinations and conspiracies have in fact unreasonably restrained and monopolized, trade and commerce in the exhibition of motion pictures in the United States, in violation of Sections 1 and 2 of the Sherman Act, in the following manner:

151. By concertedly conditioning the licensing of films distributed by one producer-exhibitor defendant in theatres operated by another such defendant upon the licensing of films distributed by the latter defendant in the theatres operated by the former defendant.

152. By concertedly excluding independently produced films from affiliated theatres.

153. By concertedly excluding unaffiliated exhibitors from the operation of competing first-run theatres in cities and towns where affiliated theatres are located.

154. By concertedly excluding unaffiliated exhibitors from operating competing theatres on the same run as the subsequent-run affiliated theatres in the cities and towns where such affiliated theatres are located.

155. By concertedly using the first and early-run affiliated theatres to control the film supply, run, clearance and admission prices of operators of competing unaffiliated theatres in the cities and towns in which affiliated theatres are located.

156. By concertedly coercing and intimidating unaffiliated exhibitors located in towns where there are no affiliated theatres to license their films upon arbitrary terms by expressed or implied threats to build or acquire a competing theatre and use it to destroy the business of the unaffiliated exhibitor.

157. By concertedly coercing and intimidating exhibitors located in towns where affiliated theatres are located or where an affiliated exhibitor desires to locate into re-

linquishing control of his theatre or a share of the profits thereof to the affiliated exhibitor by expressed or implied threats to deprive him of access to films necessary to the successful operation of his theatre or to so limit the terms and conditions on which he licenses such films that they may no longer be profitably exhibited by him.

158. By pooling or otherwise sharing with each other the profits of affiliated theatres owned or controlled by two or more producer-exhibitor defendants, located in the same competitive area and frequently operating on the same run, which would operate in competition with each other except for such pooling or profit sharing agreements.

159. By agreeing to divide the available films among affiliated theatres owned or controlled by two or more producer-exhibitor defendants located in the same competitive area, without competitive negotiations, in situations where such theatres would otherwise compete with each other for such films.

160. By entering into joint arrangements with respect to a single theatre, whereby the film buying control or proceeds from operation thereof is divided between two or more producer-exhibitor defendants.

161. By concertedly refraining from building, buying or offering to lease theatres in areas where they might compete with existing affiliated theatres, except under agreements preventing competition such as those noted in paragraphs 158, 159 and 160 above.

162. By concertedly effecting a division of the territory of the entire United States between them for theatre operating purposes.

163. By concertedly acquiring and maintaining a monopoly of the business of exhibiting motion pictures in approximately 80% of the cities of the United States with populations of more than 100,000.[18]

164. By concertedly acquiring and maintaining a monopoly of the business of exhibiting motion pictures in all of the cities of the United States with populations of more than 1,000,000.[18]

165. By concertedly acquiring and maintaining a monopoly of the business of exhibiting motion pictures in each of the following cities of the United States with populations of more than 100,000[18] for the theatres affiliated with the producer-exhibitor defendants respectively named thereafter.

City	Population rank	Defendants
New York, N. Y.	1	Loew's, Paramount, RKO, Warner
Chicago, Ill.	2	Paramount, RKO, Warner
Philadelphia, Pa.	3	Fox, Paramount, Warner
Detroit, Mich.	4	Fox, Paramount
Los Angeles, Calif.	5	Fox, Loew's, Paramount, RKO, Warner
Cleveland, Ohio	6	Loew's, RKO, Warner
Boston, Mass	9	Loew's, Paramount, RKO
Pittsburgh, Pa.	10	Loew's, Warner
Washington, D. C.	11	Loew's, RKO, Warner
San Francisco, Calif. ..	12	Fox, Loew's, Paramount, RKO
Milwaukee, Wis.	13	Fox, Warner
Buffalo, N. Y.	14	Loew's, Paramount
New Orleans, La.	15	Loew's, Paramount, RKO
Minneapolis, Minn. ..	16	Paramount, RKO
Cincinnati, Ohio	17	RKO
Newark, N. J.	18	Loew's, Paramount, RKO, Warner
Kansas City, Mo.	19	Fox, Loew's, Paramount
Houston, Tex.	21	Loew's, Paramount

[18]All population figures are taken from 1940 census.

City	Population rank	Defendants
Seattle, Wash.	22	Fox
Rochester, N. Y.	23	Loew's, Paramount, RKO
Denver, Colo.	25	Fox, Loew's, RKO
Portland, Oreg.	26	Fox
Columbus, Ohio	27	Loew's, RKO
Oakland, Calif.	28	Fox
Atlanta, Ga.	29	Loew's, Paramount
Jersey City, N. J.	30	Loew's, RKO, Warner
Dallas, Tex.	31	Paramount
Memphis, Tenn.	32	Loew's, Paramount, Warner
St. Paul, Minn.	33	Paramount, RKO
Birmingham, Ala.	35	Paramount
San Antonio, Tex.	37	Paramount, Warner
Omaha, Nebr.	39	Paramount, RKO
Dayton, Ohio	40	Loew's, RKO
Syracuse, N. Y.	41	Loew's, RKO, Warner
Oklahoma City, Okla.	42	Paramount, Warner
San Diego, Calif.	43	Fox
Worcester, Mass.	44	Loew's, Paramount, Warner
Richmond, Va.	45	Loew's
Fort Worth, Tex.	46	Paramount
Jacksonville, Fla.	47	Paramount
Miami, Fla.	48	Paramount
Youngstown, Ohio	49	Warner
Hartford, Conn.	51	Loew's, Paramount, Warner
Grand Rapids, Mich.	52	Paramount, RKO
Long Beach, Calif.	53	Fox
New Haven, Conn.	54	Loew's, Paramount, Warner
Des Moines, Iowa	55	Paramount, RKO
Flint, Mich.	56	Paramount, RKO
Salt Lake City, Utah	57	Paramount
Springfield, Mass.	58	Loew's, Paramount, Warner
Bridgeport, Conn.	59	Loew's, Warner
Norfolk, Va.	60	Loew's
Yonkers, N. Y.	61	Loew's, Paramount, RKO
Scranton, Pa.	63	Paramount
Paterson, N. J.	64	Paramount, Warner
Albany, N. Y.	65	RKO, Warner
Chattanooga, Tenn.	66	Paramount
Trenton, N. J.	67	RKO
Spokane, Wash.	68	Fox
Camden, N. J.	71	Warner

City	Population rank	Defendants
Erie, Pa.	72	Warner
Wichita, Kans.	74	Fox
Knoxville, Tenn.	75	Paramount
Wilmington, Del.	76	Loew's, Warner
Reading, Pa.	79	Loew's, Warner
Tampa, Fla.	83	Paramount
Sacramento, Calif.	85	Fox
Peoria, Ill.	86	Paramount
South Bend, Ind.	88	Paramount
Lowell, Mass.	89	Paramount, RKO
Utica, N. Y.	90	Warner
Charlotte, N. C.	91	Paramount
Duluth, Minn.	92	Paramount

C. *Conspiracies to unreasonably restrain and monopolize the production of motion pictures participated in by the producer defendants*

166. All of the producer defendants, each well knowing all of the matters and things hereinbefore alleged, for many years last past, have combined and conspired with each other to unreasonably restrain and monopolize and pursuant to said combinations and conspiracies have in fact unreasonably restrained, trade and commerce in the production of motion pictures in the United States, and have attempted to and have succeeded in monopolizing such trade and commerce in violation of Sections 1 and 2 of the Sherman Act, in the following manner:

167. By concertedly placing under contract most of the valuable stars, featured players, directors, technicians and others who have gained fame, prestige, renown, artistic, technical or other great value in the production branch of the industry.

168. By concertedly loaning and exchanging production personnel under contract to each major producer, and costly production equipment owned by each major producer, to and with other major producers on uniform, non-competitive terms.

169. By concertedly excluding independent producers from access to production personnel under contract to each major producer, and costly production equipment owned by each major producer, on the same terms on which they are made available to major producers.

D. *Combinations of which each producer-exhibitor defendant is a member which are illegal per se*

170. Each of the combinations of parent and subsidiary corporations which respectively form Fox, Loew's, Paramount, RKO and Warner constitutes a separate combination and monopoly in restraint of trade, which in and of itself has violated Sections 1 and 2 of the Sherman Act in the following manner:

171. By preventing independent producers from competing with such a combination in the production of films.

172. By preventing independent distributors from competing with such a combination in the distribution of films.

173. By preventing unaffiliated exhibitors from competing with such a combination in the operation of theatres in cities and towns where theatres operated by it are located.

174. By acquiring and maintaining a monopoly of the business of exhibiting motion pictures in areas serving a substantial percentage of the total population of the United States.

175. By coercing and intimidating unaffiliated exhibitors located in towns where such a combination operates no theatres to license its films upon arbitrary terms by expressed or implied threats to build or acquire a competing theatre and use it to destroy the business of such unaffiliated exhibitors.

176. By coercing and intimidating unaffiliated exhibitors located in towns where such a combination operates theatres or where it desires to operate theatres, into relinquishing control of their theatres or a share of the profits thereof, to it, by expressed or implied threats to deprive them of access to its films or to so limit the terms and conditions on which they license such films that they may no longer be profitably exhibited by them.

177. By conditioning the licensing of films distributed by such a combination in theatres operated by another such combination, upon the licensing of films distributed by the latter combination in theatres operated by the former combination.

E. *Illegal contracts between each distributor defendant and circuit theatres*

178. Each defendant distributor, well knowing all the matters and things hereinbefore alleged, for many years last past, has contracted with various theatre circuits throughout the United States, including the affiliated circuits hereinbefore mentioned, to restrain and, pursuant to such contracts, has in fact unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures among the several States of the United States, in violation of Section 1 of the Sherman Act, by entering into licensing agreements with said circuits of theatres which

contain provisions calculated to impose on independent exhibitors in competition with such circuit theatres, one or more of the discriminatory restrictions referred to in the lettered subparagraphs of paragraph 149, regardless of whether such license contracts were made pursuant to any prior concerted action, combination or conspiracy between two or more defendants.

F. *Illegal coercion by each producer-exhibitor defendant*

179. Each producer-exhibitor defendant, well knowing all the matters and things hereinbefore alleged, for many years last past, has violated Section 2 of the Sherman Act by using the monopolistic buying power of its circuit of theatres to compel each of the defendant distributors and other distributors of films to enter into licensing agreements with its circuit on terms which prevent unaffiliated theatres from in fact competing with its circuit theatres, either with respect to the terms on which said unaffiliated theatres license films or the terms on which they exhibit films to the public, regardless of whether such license contracts were made pursuant to any prior concerted action, combination or conspiracy between two or more defendants.

G. *Illegal contracts made by each distributor defendant with exhibitors generally*

180. Each distributor defendant, well knowing all the matters and things hereinbefore alleged, for many years last past has made diverse contracts with exhibitors generally throughout the United States to unreasonably restrain and, pursuant to such license contracts, has in fact unreasonably restrained trade and commerce in the distribution, production and exhibition of motion pictures in the United

States in violation of Section 1 of the Sherman Act, in the following manner, regardless of whether such license contracts were made pursuant to any concerted action, combination or conspiracy between two or more defendants:

181. By fixing license terms in contracts made before the exhibitor has had a fair opportunity to estimate the value and character of the films licensed and before such films have been completed or trade shown.

182. By fixing the run, clearance and minimum admission price terms in license agreements covering large groups of pictures of widely varying quality released over periods of a year or more.

183. By conditioning the licensing of one film or group of films upon the licensing of another film or group of films.

184. By conditioning the licensing of films in one theatre, or group of theatres, upon the licensing of films in another theatre, or group of theatres, which has no relationship to the first theatre, or group of theatres other than common ownership or control or a common film buying agent.

185. By making clearance agreements which are calculated to suppress competition between exhibitors rather than to protect the distributor's revenue.

186. By refusing to license a run on any terms, for the purpose of protecting an exhibitor from competition rather than to protect the distributor's revenue.

187. By arbitrarily withholding prints available in an exchange from one exhibitor in order to give another ex-

hibitor a prior playing date not provided for in his licensing agreements.

VIII. Prayer

Wherefore, plaintiff prays:

(1) That the court issue its preliminary injunction restraining the defendants herein, and each of them, from building, buying, leasing, or otherwise acquiring any additional theatres or any further interest, or interests, in any additional theatres, either directly or indirectly, through the acquisition thereof by subsidiary or associated corporations or otherwise, until the final decree herein or until the further order of this court.

(2) That each of the contracts, combinations, and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, be declared illegal and violative of the Sherman Act.

(3) That the defendants herein, their subsidiaries, and each of them, and each and all of their respective officers and directors, and each and all of the respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, their subsidiaries, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies and all restraints of said interstate trade and commerce in the production, distribution, and exhibition of motion pictures described herein, and from entering into and carrying out, directly or indirectly, expressly or impliedly, any monopolies or restraints of interstate trade and commerce similar to those alleged herein to be illegal.

(4) That a nation-wide system of impartial arbitration tribunals or such other means of enforcement as the court may deem proper be established pursuant to the final decree of this court in order to secure adequate enforcement of whatever general and nation-wide prohibitions of illegal practices may be contained therein.

(5) That the integration of the production and exhibition branches of the industry by the producer-exhibitor defendants herein, and each of them, be declared to be unlawful as an instrumentality of monopoly and restraint upon interstate trade and commerce, and violative of the Sherman Anti-Trust Act.

(6) That the defendants Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, Warner Bros. Pictures, Inc., Loew's, Incorporated, and Radio-Keith-Orpheum Corporation, and each of them, under the direction and supervision of the court be ordered and directed to divest themselves of all interest and ownership, both direct and indirect, either in theatres and theatre holdings or in production and distribution facilities and that they, and each of them, and their respective successors be permanently enjoined from acquiring, directly or indirectly, any other interests in the branch of the industry divested or in any persons, firms, or corporations which are engaged or may engage in that branch of the industry; said divestiture to be accomplished and carried out upon such terms and conditions as the court may deem proper.

(7) That the defendants Paramount Pictures, Inc., Twentieth Century-Fox Film Corporation, National Theatre Corporation, Warner Bros. Pictures, Inc., Warner Bros. Circuit Management Corporation, Loew's, Incorporated, Radio-Keith-Orpheum Corporation, Keith-Albee-Orpheum Corporation, RKO Proctor Corporation and

RKO Midwest Corporation and each of them, under the direction and supervision of the court be ordered and directed to divest themselves of all interest and ownership, both direct and indirect, in any theatres which the court shall find have been used by one or more of them to unreasonably restrain trade and commerce in motion pictures in violation of Section 1 of the Sherman Act or to monopolize trade and commerce in motion pictures in violation of Section 2 of the Sherman Act.

(8) That the plaintiff have such other and further relief as the court may deem proper.

(9) That the plaintiff recover its costs herein.

UNITED STATES OF AMERICA,
JOHN T. CAHILL,
United States Attorney for the Southern District of New York.

ROBERT H. JACKSON,
Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

JAMES V. HAYES,
ROBERT L. WRIGHT,
ROBERT E. SHER,
J. STEPHEN DOYLE, Jr.,
JOHN F. CLAGETT,
Special Assistants to the Attorney General.

JAMES M. MALLOY,
J. FRANK CUNNINGHAM,
SEYMOUR SIMON,
Special Attorneys.

Filed: Nov. 14, 1940.

Answer to Petition of United Artists Defendants

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

ANSWER OF UNITED ARTISTS DEFENDANTS

UNITED ARTISTS CORPORATION, HARRY D. BUCKLEY, ARTHUR W. KELLY, HARRY J. MULLER, DENNIS F. O'BRIEN, EDWARD C. RAFTERY, EMANUEL SILVERSTONE, THEODORE CARUSO and JAMES ROOSEVELT, referred to in the petition as "UNITED ARTISTS DEFENDANTS", and for convenience in this answer sometimes referred to as "UNITED ARTISTS DEFENDANTS", answering the petition of United States of America, petitioner, allege as follows:

1. Defendants deny each and every allegation of Paragraphs (1) and (2) of the petition.

2. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (3) (a), (b), (c), (d), and (e) of the petition except that defendants admit that there are companies engaged in the motion picture business under the name and style of Paramount Pictures, Inc., Paramount News, Inc., Paramount Pictures Distributing Company, Inc., and that some of the individuals mentioned in Paragraph (3) (e) are in some manner connected with one or more of the so-called Paramount companies.

3. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 4(a), (b), (c), (d) and (e) of the petition, except that defendants admit that there are companies engaged in the motion picture business under the name and style of Loew's, Incorporated, Metro-Goldwyn-Mayer Corporation, Metro-Goldwyn-Mayer Distributing Corporation of Texas, and that some of the individuals mentioned in Paragraph (4) (e) are in some manner connected with one or more of the so-called Loew defendants.

4. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs (5) (a), (b), (c), (d), (e), (f), (g) and (h), except that defendants admit that there is a bank or trust company named the Irving Trust Company, and that there are companies known as Radio-Keith-Orpheum Corporation, Pathe News, Inc., The Van Beuren Corporation, RKO Proctor Corporation, RKO Midwest Corporation, and that said companies are engaged in some way in the motion picture business and that some of the individuals referred to in Paragraph (5) (h) are connected with one or more of the companies referred to in said Subdivisions (5) (a) to (h), inclusive.

5. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (6) (a), (b), (c), (d), (e), (f), of the petition, except that the defendants admit that there are companies engaged in the motion picture business under the name and style of Warner Bros. Pictures, Inc., Vitagraph, Inc., The Vitaphone Corporation, Warner Bros. Circuit Man-

agement Corporation, and that some of the individuals mentioned in Paragraph (6) (f) are in some manner connected with one or more of the so-called Warner Bros. defendants.

6. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (7) (a), (b), (c), (d), (e), (f), (g) and (h) of the petition, except defendants admit that there are companies engaged in the motion picture business under the name and style of Twentieth Century-Fox Film Corporation, Movietonews, Inc., Twentieth Century-Fox Corporation of Texas, Twentieth Century-Fox Distributing Corporation, National Theatres Corporation, and that some of the individuals mentioned in Paragraph (7) (h) are in some manner connected with one or more of the so-called Twentieth Century-Fox defendants.

7. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs (9) (a), (b), (c), (d), (e) and (f) of the petition, except that defendants admit that there are companies engaged in the motion picture business under the name and style of Columbia Pictures Corporation, Columbia Pictures Corporation of California, Screen Gems, Inc., Columbia Pictures of Louisiana, Inc., Columbia Pictures Distributing Company, Inc., and that some of the individuals referred to in Paragraph (9) (f) are connected with one or more of the companies referred to in said Subdivisions (9) (a) to (f), inclusive.

8. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained

in Paragraphs (10) (a), (b), (c), (d) and (e) of the petition, except that defendants admit that there are companies engaged in the motion picture business under the name and style of Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc., and that some of the individuals referred to in Paragraph (10) (e) are connected with one or more of the companies referred to in said Subdivisions (10) (a) to (e), inclusive.

9. Defendants admit the allegations contained in Paragraphs (12) (a) and (b), except that defendants deny that Attilio H. Giannini is President, George J. Schaefer is Vice-President, that Loyd Wright is Secretary, that Mary Pickford is First Vice-President and a director, that Edward C. Raftery is Assistant Secretary and a director, and that Charles Chaplin, Douglas Fairbanks and Samuel Goldwyn are directors of said defendant.

10. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 34, 35, 36, 37, 38, 39 and 40 of the petition, except that defendants admit that the motion picture industry has developed with the aid and assistance of the inventions and inventors mentioned in said paragraphs and that the paragraphs do in part and with some degree of accuracy set forth the history of the motion picture business for the periods referred to therein.

11. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph 41 of the petition, except that the defendants admit

that there are three branches generally recognized in the industry, to wit: production, distribution and exhibition.

12. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 42, 43, 44, 45, 46 of the petition.

13. Defendants deny each and every allegation of Paragraph 47, except that defendants admit from time to time that they had some knowledge that producers, directly or indirectly, had acquired theatres and that there were mergers or affiliations in the motion picture business from time to time.

14. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph 48 of the petition, except that defendants admit that there was a circuit of theatres in New York City and elsewhere known as the Loew Circuit, and that they have some knowledge that a company known as Metro was acquired by Loew's, Inc. in or about 1920, the exact date being unknown to the defendants, and that later a company known as Metro-Goldwyn-Mayer appeared in the motion picture industry and that it was in some way connected or affiliated with the interests owned or controlled by the so-called Loew's, Inc.

15. Defendants deny each and every allegation of Paragraph 49 of the petition, except that defendants admit that defendant Paramount Pictures, Inc., or its predecessor in title, had some interest in theatres; that Loew's, Incorporated had some interest in theatres; and that Fox Film Corporation had some interest in theatres and that

Radio-Keith Orpheum Corporation had some interest in theatres.

16. Defendants deny each and every allegation of Paragraph 50 of the petition, except defendants admit that Paramount Pictures, Inc. had theatres in New England and elsewhere; that Loew's, Incorporated had theatres in large cities of the United States and elsewhere; that Twentieth Century-Fox Film Corporation had some interest in the theatre corporations mentioned therein, and that the theatre corporation had an interest in theatres located in the West, Midwest and elsewhere; that defendant Universal Pictures Corporation or some company connected with the defendant Universal Pictures Corporation at some time had some interest in theatres in the United States and that Radio-Keith-Orpheum Corporation had some interest in theatres in the United States.

17. Defendants deny each and every allegation of Paragraph (52) of the petition, except that defendants admit that Warner Bros. Pictures, Inc., or some company connected therewith, had some interest in the property referred to in this paragraph as "Vitaphone" and in the property known as the Stanley Company of America and in the company referred to as First National Pictures Corporation, the nature and extent of such interest being unknown to these defendants.

18. Defendants deny any knowledge or information sufficient to form a belief as to the allegations in Paragraph (53) of the petition, except that defendants admit that there were bankruptcy proceedings in which some of the parties mentioned in said paragraph were involved

and in which they were reorganized, the nature and extent or character of the reorganizations being unknown to these defendants.

19. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (54).

20. Defendants deny any knowledge or information sufficient to form a belief as to the allegations in Paragraph (56), except that defendant admits that it is engaged in the business of distributing motion pictures, some of which are produced by parties owning stock in the defendant United Artists Corporation.

21. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs (58) to (78), inclusive, except that defendants admit that said paragraphs do with some degree of accuracy and in part define the term "production".

22. Defendants deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs (79) to (94), inclusive, except that defendants admit that said paragraphs do with some degree of accuracy and in part define the term "distribution".

23. Defendants deny any knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs (95) to (132), inclusive, except that defendants admit that said paragraphs do with some degree of accuracy and in part define the term "exhibition".

Answer to Petition of United Artists Defendants

24. Defendants deny each and every allegation of Paragraphs (133), (134) and (135) of the petition.

25. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs (136), (137), (138), (139), (140).

26. Defendants deny each and every allegation of Paragraph (141) of the petition, and it is affirmatively pleaded that each and every producer using the facilities of the defendant United Artists Corporation for distribution as an independent producer.

27. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (142) of the petition, except that defendants admit that the producer-exhibitor defendants do from time to time exhibit pictures produced by it or them in its or their own theatres.

28. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (143) of the petition.

29. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (144) of the petition, except that defendants admit that certain pictures are usually exhibited for at least a week in first-run theatres in the metropolitan cities.

30. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (145) of the petition.

Answer to Petition of United Artists Defendants

31. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (146), (147), (148), (149) and (150) of the petition.

32. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (151), (152) and (153) of the petition.

33. Defendants, in so far as it affects United Artists Corporation, deny each and every allegation of Paragraphs (154), (155), (156) and (157) of the petition.

34. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph (158) of the petition, except that defendants admit that producers produce motion pictures and theatres exhibit motion pictures.

35. Defendants deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph (159) of the petition.

36. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (163) of the petition, except that defendants admit that said paragraph in part sets out the method of producing motion pictures.

37. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (164) and (165) of the petition.

Answer to Petition of United Artists Defendants

38. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (166) of the petition, except that defendants admit that said paragraph in part set out the manner and method of developing motion picture negatives and the manufacture of prints.

39. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraph (167) of the petition, except that defendants admit that from time to time the United Artists Corporation announces for future release a limited number of special feature photoplays to be produced by a varied group of independent producers.

40. Defendants deny each and every allegation of Paragraph (168) of the petition, except that defendants admit that United Artists Corporation employs salesmen to work in certain exchange cities to solicit applications for license agreements for photoplays either released or to be released shortly after solicitation and that said photoplays are copyrighted and that said license applications are signed by the exhibitors and sent to the New York office of the defendant United Artists Corporation for approval or rejection by the distributor and the producers.

41. Defendants deny each and every allegation of Paragraphs (172) and (173) of the petition.

42. Defendants deny each and every allegation of Paragraph (174) of the petition, except that defendants admit that some of the companies referred to in said par-

agraph are engaged in some manner in the production and exhibition branches of the motion picture industry.

43. Defendants deny each and every allegation of paragraph (175) of the petition.

44. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (176), (177), (178), (179) and (180) of the petition.

45. Defendants deny each and every allegation of Paragraph (181) of the petition, except that defendants admit that some of the defendants who are engaged in both the production and exhibition branches of the motion picture industry do exhibit photoplays of other defendant companies in their respective theatres.

46. Defendants deny each and every allegation contained in Paragraph (182) of the petition, except that defendants admit that there are many exhibition license agreements under the terms of which the product of the defendant United Artists Corporation is made available for exhibition in first-run theatres, whether said theatres are owned by defendants engaged both as producers and exhibitors, or by parties engaged solely in the exhibition business.

47. Defendants deny each and every allegation of Paragraphs (183), (184), (185), (186) and (187) of the petition.

48. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Para-

graphs (188), (189), (190), (191), (192), (193), (194), (195), (196), (197) and (198) of the petition.

49. Defendants deny any knowledge or information sufficient to form a belief as to the allegations of Paragraphs (199) to (213) of the petition, inclusive.

50. Defendants deny each and every allegation of Paragraph (214) of the petition, and specifically deny the allegations of Paragraph (214), Subdivisions (1), (2), (3), (4), (6), (7), (8), (9), except that defendants admit that acting separately and independently the United Artists Corporation has made contracts with exhibitors wherein and whereby the United Artists Corporation reserved the right to designate play-dates and/or which provided for clearance and/or which prohibited the showing of a certain picture as part of a double bill, and/or imposed a score charge and/or minimum admission to be charged at the theatre exhibiting said picture or pictures.

51. Defendants deny each and every allegation of Paragraph (215) of the petition, and specifically deny the allegations of Subdivisions (1), (2), (3), (a), (b), (c), (d), (e), (f), (g), (h), and (4), (5) and (6), except that defendants admit from time to time, acting separately and independently, United Artists Corporation made advertising allowances, reduced film rental where in the opinion of United Artists Corporation such reduction was warranted, and made agreements where in its opinion a move-over would mean more revenue to it.

52. Defendants deny each and every allegation of Paragraphs (216), (217), (218), (219), (222), (223), (224), (225), (226) and (227) of the petition.

Answer to Petition of United Artists Defendants

WHEREFORE, defendants demand judgment dismissing the petition, with costs and disbursements, together with such other and further relief as to the Court may seem just and proper.

O'BRIEN, DRISCOLL & RAFTERY
Attorneys for Defendants
United Artists Corporation,
and
"United Artists Defendants",
152 West 42nd Street,
Office & P. O. Address,
Borough of Manhattan,
City of New York.

Answer to Petition of United Artists Defendants

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

EDWARD C. RAFTERY, being duly sworn, deposes and says: That he is Secretary of UNITED ARTISTS CORPORATION, one of the defendants mentioned in the within action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

EDWARD C. RAFTERY.

Sworn to before me this
8th day of August, 1939.

CHESTER A. OLBERT,
Notary Public.
Bronx Co. Clk's No. 11, Reg. No. 19040.
N. Y. Co. Clk's No. 112, Reg. No. 0-O-71.
Certficate filed in Westchester Co. Clerk.
Certificate filed in Westchester Co. Register.
Commission Expires March 30, 1940.

Answer to Amended Complaint of United Artists Corporation

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant United Artists Corporation answering the amended and supplemental complaint of the plaintiff by its attorneys, O'Brien, Driscoll & Raftery, respectfully alleges:

1. Defendant denies each and every allegation of paragraphs 1 and 2 of plaintiff's amended and supplemental complaint.

2. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 3 (a) (b); 4; 5 (a) (b) (c) (d) (e); 6 (a) (b) (c); 7 (a) (b); 9 (a) (b) (c); 10 (a) (b) (c) (d) of plaintiff's amended and supplemental complaint.

3. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80 of plaintiff's amended and supplemental complaint.

Answer to Amended Complaint of United Artists Corporation

4. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraph 83 of plaintiff's amended and supplemental complaint, except that defendant admits that it released the number of feature pictures mentioned and described in said paragraph as features released by United Artists.

5. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 of plaintiff's amended and supplemental complaint.

6. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraph 107 of plaintiff's amended and supplemental complaint, except that the defendant admits that it from time to time makes a separate contract with exhibitors for the exhibition of photoplays produced by each of the respective producers using the facilities of the defendant for distribution.

7. Defendant denies each and every allegation of paragraph 108 of plaintiff's amended and supplemental complaint, except that defendant admits that the quality of feature pictures, as box-office attractions, varies widely.

8. Defendant denies each and every allegation of paragraphs 109, 110, 111, 112, 113, 114 and 115 of plaintiff's amended and supplemental complaint, except that defendant admits that it makes exhibition license agreements with various exhibitors for the exhibition of feature pictures

distributed by the defendant, and for the contents of said agreements respectfully asks leave to refer to the originals thereof.

9. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 116, 117, 118, 119, 120, 121, 122 and 123 of plaintiff's amended and supplemental complaint.

10. Defendant denies each and every allegation of paragraphs 124, 125, 126, 127 and 128 of plaintiff's amended and supplemental complaint.

11. Defendant denies any knowledge or information sufficient to form a belief as to the allegations of paragraphs 129, 130, 131 and 132 of plaintiff's amended and supplemental complaint.

12. Defendant denies each and every allegation of paragraphs 140 and 141 of plaintiff's amended and supplemental complaint in so far as it alleges that the production of motion pictures is in or a part of interstate trade or commerce.

13. Defendant denies each and every allegation of paragraphs 142 143, 144, 145, 146, 147, 148, 149 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p); 150, 151 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186 and 187 of plaintiff's amended and supplemental complaint.

Answer to Amended Complaint of United Artists Corporation

WHEREFORE, defendant demands judgment dismissing the plaintiff's amended and supplemental complaint, together with the costs and disbursements of this action.

O'BRIEN, DRISCOLL & RAFTERY

By: .....
Attorneys for Defendant
UNITED ARTISTS CORPORATION
Office & P. O. Address
152 West 42nd Street
Borough of Manhattan
City of New York

Government's Bill of Particulars in *United States* v. *Paramount*

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

BILL OF PARTICULARS

The United States of America, petitioner herein, hereby files the following bill of particulars in response to the United Artists motion* in accordance with the decision of the Court dated March 7, 1939. The subheadings listed below, under which said particulars are furnished, are the same subheadings set forth in said motion and in said decision.

2(A). The phrase "for many years last past", in Petition Paragraph 173, refers to a period commencing between 1918 and 1930 and continuing from the time it commenced to the present.

3(A). Petitioner does not know the exact date or dates on which the violations alleged in Petition Paragraph 174 commenced. However, petitioner believes that said violations commenced at some time during the period between 1918 and 1924 and have continued until the present time.

4(A). The phrase "as hereinafter alleged," in Petition Paragraph 175 refers to the allegations contained in Petition Paragraphs 199 to 213, inclusive.

*United Artists motion refers to the motion for a bill of particulars in which the defendant United Artists Corporation and each of the individual defendants listed in Petition Paragraph 12(b) united.

Government's Bill of Particulars in United States v. Paramount

4(B). "Quality, high-class feature films", as used in Petition Paragraph 175 are films which, by reason of either their large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, are likely to attract a large patronage at the highest admission prices charged in each area, that is, are likely to have strong box office appeal.

4(C)(1). Petitioner does not know the exact date or dates upon which the "monopolization of the production of quality, high-class feature films", referred to in Petition Paragraph 175, commenced. However, petitioner believes that said monopolization commenced at some time during the period between 1918 and 1924 and has continued until the present.

7(B). Petitioner does not know the exact period of time during which the defendants have excluded all other producers of pictures and their product from first-run metropolitan theatres as alleged in Petition Paragraphs 183 and 184. However, petitioner believes that said exclusion commenced at some time during the period between 1918 and 1924 and has continued until the present.

8(C). The petitioner claims that the monopoly of the first or preferred run exhibition alleged in Petition Paragraphs 186, 190 and 198 extends to the monopolization of both the exhibition of high grade, quality films on first or preferred runs and the exhibition of all motion pictures produced or distributed by the defendants.

8(D). Petitioner does not know the exact date or dates upon which the violations alleged in Petition Paragraphs

186, 190 and 198 commenced. However, petitioner believes that said violations commenced at some time during the period between 1918 and 1928 and have continued to the present time.

10(B). Petitioner claims that in the division of territory which has resulted from the acquisition of theatres by the producer-exhibitor defendants or their predecessors, as alleged in Petition Paragraph 189, the defendants have acted in pursuance of agreements or understandings and that the defendant United Artists or the United Artists defendants had knowledge thereof.

10(C). The time or times, place or places and the names of the parties or their agents are unknown to the petitioner; however, it is claimed that all the defendants or their subsidiaries or affiliates were or have become parties thereto at some time during the period between 1918 and 1930 and have continued to be parties thereto to the present time. Petitioner believes that such agreements or understandings were partly oral and partly in writing. Petitioner does not know the substance of each such oral agreement or understanding. However, petitioner claims that collectively the agreements or understandings divided the exhibition territory throughout the United States among the exhibitor defendants or their subsidiaries or affiliates, and provided that none of them was to acquire theatres in territory assigned to any other defendant.

11(B). The phrase "as hereinafter alleged" in Petition Paragraph 190 refers to the allegations contained in Petition Paragraphs 199 to 213, inclusive.

12(D). The participants in such common purpose, plan and design are all the defendants, their subsidiaries and

affiliates, and the officers, directors, agents and employees of the defendant corporations, their subsidiaries and affiliates. The petitioner does not know when each of said participants became a party to said common purpose, plan and design; however, it is claimed that all of said participants were or have become parties to said common purpose, plan and design at some time during the period beginning in 1918 and continuing until the present time. It is further claimed that all of said corporate participants or their subsidiaries, affiliates or predecessors have been parties thereto since at least 1930 and continuing from that time until the present.

12(E). Petitioner claims that the common purpose, plan and design described in Petition Paragraph 191 is carried out pursuant to agreement between the defendants. The time or times, place or places, and the names of the parties or their agents are unknown to the petitioner; however, it is claimed that all the defendants or their subsidiaries or affiliates were or have become parties thereto at some time during the period beginning in 1918 and continuing until the present time. It is further claimed that all the defendants or their subsidiaries or affiliates have been parties thereto since at least 1930 and continuing from that time until the present. Petitioner believes that such agreements or understandings were partly oral and partly in writing. Petitioner does not know the substance of each such oral agreement or understanding. However, petitioner claims that collectively said agreements and understandings provided, in substance, that the defendants were to extend to affiliated theatres priority and preference over all other exhibitors in the exhibition of motion pictures distributed by the defendants. Said agreements and understandings further

gave the producer-exhibitor defendants the exclusive option to license all or some of the motion pictures distributed by the defendants for exhibition in affiliated theatres upon any run before such pictures were offered for license to competing unaffiliated theatres.

12(F). "Priority and preference", as used in Petition Paragraph 191, means priority in point of time given to a theatre over a competing theatre or competing theatres with respect to (1) the negotiation for and licensing of films and (2) the exhibition thereof. Preference refers to the exhibition of favors and advantages to a theatre over a competing theatre or competing theatres. Among such favors and advantages are those described in Petition Paragraph 215.

12(H). There is no difference between the "priority and preference over all other exhibitors in the exhibition of motion pictures * * *" referred to in Petition Paragraph 191: the "priority and preference * * * in the selection of the product of the other producer-exhibitor defendants" referred to in Petition Paragraph 145, and the "existing arrangements among the defendants for the prior, preferential showing of their respective pictures in theatres of the producer-exhibitor defendants", referred to in Petition Paragraph 152.

13(B). The "franchises, contracts, agreements and understandings" referred to in Petition Paragraph 192, the "franchises, contracts, agreements, or understandings" referred to in Petition Paragraph 196, the "contracts, agreements, and franchises" referred to in Petition Paragraph 145, the "long-term franchises, agreements, contracts, and understandings" referred to in Petition Paragraph 147,

and the "existing arrangements among the defendants" referred to in Petition Paragraph 152 are the same.

13(C). The petitioner is unable to specify the exact dates upon which United Artists commenced to extend the "priority and preference" referred to in Petition Paragraph 191. However, the petitioner claims that the defendant United Artists commenced to extend the priority and preference referred to during the period between 1918 and 1930 and has continued to extend said priority and preference until the present.

13(E). It is claimed that in reserving product as alleged in Petition Paragraph 192 the defendant United Artists or United Artists defendants have acted pursuant to agreements or understandings with the other defendants herein. The time or times, place or places, and the names of the parties or their agents are unknown to the petitioner, except it is claimed that all the defendants or their subsidiaries or affiliates were or have become parties thereto at some time during the period beginning in 1918 and continuing to the present. It is further claimed that all the defendants, or their subsidiaries or affiliates have been parties thereto since at least 1930 and continuing from that time until the present. Petitioner believes that such agreements or understandings were partly oral and partly in writing. Petitioner does not know the substance of each such oral agreement or understanding. However, petitioner claims that collectively the agreements or understandings provided, in substance, that each defendant would reserve motion pictures distributed by it for licensing by the producer-exhibitor defendants until such time as the pictures which were desired by each and all of said producer-exhibitor defendants had been selected.

Government's Bill of Particulars in United States v. Paramount

14(A). Petitioner is unable at this time to identify all of the various metropolitan areas referred to in Petition Paragraph 193. However, among such metropolitan areas are the following:

Atlanta, Georgia
Baltimore, Maryland
Boston, Massachusetts
Brooklyn, New York
Buffalo, New York
Charlotte, North Carolina
Chicago, Illinois
Cleveland, Ohio
Columbus, Ohio
Denver, Colorado
Des Moines, Iowa
Houston, Texas
Kansas City, Missouri
Los Angeles, California
Memphis, Tennessee
Milwaukee, Wisconsin
Minneapolis, Minnesota
New Haven, Connecticut
New Orleans, Louisiana
New York, New York
Newark, New Jersey
Oklahoma City, Oklahoma
Omaha, Nebraska
Pittsburgh, Pennsylvania
San Francisco, California
St. Paul, Minnesota
Washington, D. C.

Government's Bill of Particulars in United States v. Paramount

14(C). It is claimed that the convenient division referred to in Petition Paragraph 193 was arranged pursuant to agreements or understandings among the defendants. The time or times, place or places, and the names of the parties or their agents are unknown to the petitioner, except it is claimed that all the defendants or their subsidiaries or affiliates were or have become parties thereto during the period beginning in 1918 and continuing until the present time. It is further claimed that all the defendants or their subsidiaries or affiliates have been parties thereto since at least 1930 and continuing from that time until the present. Petitioner believes that such agreements or understandings were partly oral and partly in writing. Petitioner does not know the substance of each such oral agreement or understanding. However, petitioner claims that collectively the agreements or understandings provided, in substance, that in large cities where two or more of the producer-exhibitor defendants operate affiliated theatres within the same competitive area or areas, said producer-exhibitor defendants would not compete for product to be exhibited in their theatres, but would arrange among themselves to apportion motion pictures produced by all the defendants among said theatres so that each would have a share thereof.

15(D). "High grade, quality films", as used in Petition Paragraph 194, means the same as "quality, high-class feature films", defined in Item 4(B) above.

16. The phrase "said monopolization", as used in Petition Paragraph 195, refers to the monopolization of the exhibition of motion pictures upon first or preferred runs

in every section and through every area of the United States where the affiliated theatres of any of the producer-exhibitor defendants exist or operate.

17. The "franchises, contracts, agreements or understandings", referred to in Petition Paragraph 196 are the same as those referred to in Petition Paragraph 192.

19(A). The phrase "the said defendants", who are alleged in Petition Paragraph 214 to have placed themselves in a position of importance and to have imposed upon unaffiliated exhibitors throughout the United States a series of harsh, onerous and unfair trade practices, includes each and every defendant in this action engaged in distribution.

19(B). *Coercive selling.*—In order to compel independent exhibitors to pay high film rentals for its product or to purchase its films in situations where independent exhibitors do not purchase such films, or to purchase a greater number of its films in situations where independent exhibitors already purchased some of its films, each defendant engages and has engaged in one or more of the following coercive selling methods: threatening to build a competing theatre; threatening to deprive an independent exhibitor of product; purchasing a theatre site or sites in the neighborhood of the independent exhibitor, with the suggestion conveyed to the independent exhibitor either directly or through third parties that the defendant in question intends to build and operate a theatre or theatres on such sites in opposition to the independent exhibitor; threatening to purchase an equity or interest in the independent theatre

for the purpose of gaining control through reorganization or otherwise; or threatening to impose upon the independent exhibitor unreasonable clearance.

19(C). It is claimed that the defendant United Artists has been or is engaged in all of the unfair trade practices set forth in Petition Paragraph 214.

19(E). It is claimed that in engaging in the unfair trade practices alleged in Petition Paragraph 214, the defendant United Artists or the United Artists defendants have acted pursuant to agreements or understandings with the other defendants herein. The time or times, place or places, and the names of the parties are unknown to the petitioner, except it is claimed that all of the defendants or their subsidiaries and affiliates were or have become parties thereto during the period beginning in 1918 and continuing until the present time. It is not known whether such agreements or understandings were oral or in writing. The provisions of each such agreement or understanding are not known to petitioner; however, petitioner claims that these agreements or understandings provided in substance that as a general rule the defendants were to impose the harsh, onerous and unfair trade practices described in subdivisions 1 to 9 of Petition Paragraph 214, upon unaffiliated exhibitors and were not to impose them upon affiliated theatres.

19(I)(2). It is alleged in Petition Paragraph 214(3) that "the independent exhibitor is forced to accept such arbitrary designation of preferred playing dates in order to obtain the product necessary to the operation of his

theatres." This means that unless the independent exhibitor agrees to exhibit features on dates arbitrarily designated by the distributor, the distributor will refuse to license to said exhibitor the feature pictures on which the playing dates have been so designated, and, in some cases, other of its pictures.

19(J). The clearance and zoning schedules referred to in Petition Paragraph 214(4) have been arbitrary and unreasonable in the following respects:

(1) The territorial areas over which protection has been granted have been too wide; and (2), the periods of time established between the protected run or runs and the run or runs subsequent to it have been too long.

19(K)(1). The phrase "methods of distribution", as used in Petition Paragraph 214(5), refers to the practice of licensing product to exhibitors without regard to the amount of product which is necessary for the regular requirements of such exhibitors.

19(K)(2). Petitioner claims that such overbuying by unscrupulous exhibitors was done with the knowledge, connivance or approval of United Artists.

19(K)(3). Petitioner does not claim that the result whereby unscrupulous exhibitors are permitted to overbuy is usually brought about by agreements or understandings between United Artists and such unscrupulous exhibitors other than the usual license agreement for the exhibition of motion pictures. Petitioner does claim that overbuying

results from present licensing methods, referred to in Petition Paragraph 214(5) under which distributors of motion pictures do not ascertain whether distributors can legitimately utilize their product. The petitioner claims that each distributor is under the positive duty of ascertaining from each exhibitor, prior to the licensing of its products, whether that exhibitor can legitimately use that product, taking into consideration other product already under contract, together with the exhibition policy of such exhibitor.

19(K)(4). Under present licensing methods, referred to in Petition Paragraph 214(5), distributors of motion pictures do not ascertain whether exhibitors can legitimately utilize their product. Thus it is impossible to fix responsibility for overbuying upon any one distributor. The petitioner claims that each distributor is under the positive duty of ascertaining from each exhibitor, prior to the licensing of its product, whether that exhibitor can legitimately use that product, taking into consideration other product already under contract, together with the exhibition policy of such exhibitor.

19(L)(1). Petitioner claims that film rentals have been arbitrary, unconscionable and discriminatory, as alleged in Petition Paragraph 214(6), in the following respects: (1) Based upon the exhibition value of the pictures in question, said rentals were too high; and (2), said rentals were often higher than the rentals charged affiliated theatres for the same pictures or pictures of substantially similar quality on the same run or runs or on a prior run or prior runs in the area.

Government's Bill of Particulars in United States v. Paramount

19(L)(2). Petitioner is unable at this time to furnish any instances called for by this request with respect to films distributed by United Artists.

19(L)(3)(a). United Artists and its agents have refused to license many pictures distributed by United Artists unless the independent exhibitor agrees to license said pictures upon terms based upon a percentage of the gross box office receipts. Because United Artists and all the other defendants refused to license many pictures distributed by them to independent exhibitors except upon terms based upon a percentage of the gross box office receipts, independent exhibitors are forced to accept those terms if they wish to stay in business.

20(A). Petitioner at this time is not informed of any other benefits, favors and advantages than those referred to in subsections 1 to 6 of Petition Paragraph 215.

20(B). Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Brothers Pictures, Inc., Twentieth-Century Fox Film Corporation, Columbia Pictures Corporation, Universal Corporation, United Artists Corporation, and their respective subsidiaries and affiliated corporations have extended and do extend the benefits, favors and advantages described in subdivisions 1 to 6 of Petition Paragraph 215 to Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Brothers Pictures, Inc., Twentieth-Century Fox Film Corporation and their subsidiaries and affiliates engaged in the exhibition of motion pictures.

Government's Bill of Particulars in United States v. Paramount

20(D). It is claimed that in extending to each other the benefits, favors and advantages described in Petition Paragraph 215, the defendants have acted pursuant to agreements or understandings between themselves.

20(E). The time or times, place or places, and the names of the parties or their agents are unknown to the petitioner, except it is claimed that all the defendants or their subsidiaries and affiliates were or have become parties thereto at some time during the period beginning in 1918 and continuing until the present time. It is not known whether such agreements and understandings were oral or in writing. The provisions of each agreement are not known to the petitioner; however, collectively these agreements and understandings provided, in substance, that the defendants were to extend to affiliated theatres the benefits, favors and advantages described in subsections 1 to 6 of Petition Paragraph 215 and to refuse to extend them to unaffiliated exhibitors.

22(A). "Better motion picture films" as used in Petition Paragraph 74 has the same meaning as "quality, high-class feature films", defined in Item 4(B), above. "High-grade quality films" referred to in Petition Paragraph 194, "feature photoplays of the better grade and quality" referred to in Petition Paragraph 199 and "motion pictures of the finer type" referred to in Petition Paragraph 76 have the same meaning as "better motion picture films".

24. As alleged in Petition Paragraph 109, "the term 'key city' is not capable of exact definition". For the pur-

poses of this petition, petitioner claims the following are "key cities":

Albany, New York
Atlanta, Georgia
Baltimore, Maryland
Boston, Massachusetts
Brooklyn, New York
Buffalo, New York
Charlotte, North Carolina
Chicago, Illinois
Cincinnati, Ohio
Cleveland, Ohio
Dallas, Texas
Denver, Colorado
Des Moines, Iowa
Detroit, Michigan
Houston, Texas
Indianapolis, Indiana
Kansas City, Missouri
Los Angeles, California
Memphis, Tennessee
Milwaukee, Wisconsin
Minneapolis, Minnesota
New Haven, Connecticut
New Orleans, Louisiana
New York, New York
Newark, New Jersey
Oklahoma City, Oklahoma
Omaha, Nebraska
Philadelphia, Pennsylvania
Pittsburgh, Pennsylvania

Portland, Oregon
San Francisco, California
St. Louis, Missouri
St. Paul, Minnesota
Salt Lake City, Utah
Seattle, Washington
Washington, D. C.

25. Petitioner is unable at this time to furnish a complete and accurate list of "metropolitan first-run theatres" as that term is defined in Petition Paragraph 119(a). The following is a list of theatres which petitioner is informed are "metropolitan first-run theatres" as that term is defined in Petition Paragraph 119(a). This list is subject to corrections, additions and deletions in accordance with information to be subsequently acquired:

Theatre	City and State
Strand	Albany, N. Y.
Grand	Atlanta, Ga.
Capitol	Atlanta, Ga.
Fox	Atlanta, Ga.
Paramount	Atlanta, Ga.
Georgia	Atlanta, Ga.
Century	Baltimore, Md.
Stanley	Baltimore, Md.
Hippodrome	Baltimore, Md.
Keith's	Baltimore, Md.
New	Baltimore, Md.
Orpheum	Boston, Mass.
State	Boston, Mass.
Keith's Memorial	Boston, Mass.
Boston	Boston, Mass.
Metropolitan	Boston, Mass.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
Fenway	Boston, Mass.
Paramount	Boston, Mass.
Metropolitan	Brooklyn, New York City, N. Y.
Albee	Brooklyn, New York City, N. Y.
Paramount	Brooklyn, New York City, N. Y.
Strand	Brooklyn, New York City, N. Y.
Buffalo	Buffalo, N. Y.
Century	Buffalo, N. Y.
Great Lakes	Buffalo, N. Y.
Hippodrome	Buffalo, N. Y.
Carolina	Charlotte, N. C.
Imperial	Charlotte, N. C.
State	Charlotte, N. C.
Broadway	Charlotte, N. C.
Palace	Chicago, Ill.
Apollo	Chicago, Ill.
Chicago	Chicago, Ill.
Garrick	Chicago, Ill.
Roosevelt	Chicago, Ill.
United Artists	Chicago, Ill.
Palace	Cincinnati, Ohio
Albee	Cincinnati, Ohio
Capitol	Cincinnati, Ohio
Shubert	Cincinnati, Ohio
Grand	Cincinnati, Ohio
Lyric	Cincinnati, Ohio
State	Cleveland, Ohio
Stillman	Cleveland, Ohio
Allen	Cleveland, Ohio
Palace	Cleveland, Ohio
Hippodrome	Cleveland, Ohio
Capitol	Dallas, Tex.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
Majestic	Dallas, Tex.
Melba	Dallas, Tex.
Palace	Dallas, Tex.
Rialto	Dallas, Tex.
Orpheum	Denver, Colo.
Denver	Denver, Colo.
Broadway	Denver, Colo.
Paramount	Denver, Colo.
Tabor	Denver, Colo.
Orpheum	Des Moines, Iowa
Des Moines	Des Moines, Iowa
Paramount	Des Moines, Iowa
Roosevelt	Des Moines, Iowa
Madison	Detroit, Mich.
Michigan	Detroit, Mich.
State	Detroit, Mich.
State	Houston, Tex.
Kirby	Houston, Tex.
Majestic	Houston, Tex.
Metropolitan	Houston, Tex.
Palace	Indianapolis, Ind.
Lyric	Indianapolis, Ind.
Apollo	Indianapolis, Ind.
Circle	Indianapolis, Ind.
Indiana	Indianapolis, Ind.
Midland	Kansas City, Mo.
Main Street	Kansas City, Mo.
Newman	Kansas City, Mo.
Uptown	Kansas City, Mo.
Tower	Kansas City, Mo.
Hillstreet	Los Angeles, Calif.
Pantages	Los Angeles, Calif.
Downtown	Los Angeles, Calif.
Hollywood	Los Angeles, Calif.
Loew's State	Los Angeles, Calif.
Chinese	Los Angeles, Calif.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
United Artists	Los Angeles, Calif.
Four Star	Los Angeles, Calif.
State	Memphis, Tenn.
Malco	Memphis, Tenn.
Strand	Memphis, Tenn.
Warner	Memphis, Tenn.
Warner	Milwaukee, Wis.
Wisconsin	Milwaukee, Wis.
Palace	Milwaukee, Wis.
Orpheum	Minneapolis, Minn.
State	Minneapolis, Minn.
State	Newark, N. J.
Proctor's	Newark, N. J.
Paramount	Newark, N. J.
Branford	Newark, N. J.
Capitol	Newark, N. J.
Poli's	New Haven, Conn.
College	New Haven, Conn.
Paramount	New Haven, Conn.
Sherman	New Haven, Conn.
State	New Orleans, La.
Orpheum	New Orleans, La.
Saenger	New Orleans, La.
Tudor	New Orleans, La.
Capitol	New York City, N. Y.
State	New York City, N. Y.
Paramount	New York City, N. Y.
Strand	New York City, N. Y.
Radio City Music Hall	New York City, N. Y.
Roxy	New York City, N. Y.
Rivoli	New York City, N. Y.
Keith's Palace	New York City, N. Y.
Capitol	Oklahoma City, Okla.
Criterion	Oklahoma City, Okla.
Midwest	Oklahoma City, Okla.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
Warner	Oklahoma City, Okla.
Brandeis	Omaha, Neb.
Omaha	Omaha, Neb.
Orpheum	Omaha, Neb.
Aldine	Philadelphia, Pa.
Boyd	Philadelphia, Pa.
Earle	Philadelphia, Pa.
Fox	Philadelphia, Pa.
Stanley	Philadelphia, Pa.
Staunton	Philadelphia, Pa.
Karlton	Philadelphia, Pa.
Keith's	Philadelphia, Pa.
Penn	Pittsburgh, Pa.
Stanley	Pittsburgh, Pa.
Paramount	Portland, Ore.
Mayfair	Portland, Ore.
Orpheum	Portland, Ore.
Golden Gate	San Francisco, Calif.
Fox	San Francisco, Calif.
Loew's Warfield	San Francisco, Calif.
Paramount	San Francisco, Calif.
San Francis	San Francisco, Calif.
Capitol	Salt Lake City, Utah
Paramount	Salt Lake City, Utah
Victory	Salt Lake City, Utah
Fifth Avenue	Seattle, Wash.
Paramount	Seattle, Wash.
Orpheum	Seattle, Wash.
Music Hall	Seattle, Wash.
Music Box	Seattle, Wash.
Blue House /sic/	Seattle, Wash.
State	St. Louis, Mo.
Orpheum	St. Paul, Minn.
Paramount	St. Paul, Minn.
Riviera	St. Paul, Minn.

Theatre	City and State
Tower	St. Paul, Minn.
Capitol	Washington, D. C.
Palace	Washington, D. C.
Earle	Washington, D. C.
Metropolitan	Washington, D. C.
Keith's	Washington, D. C.

26(A). The metropolitan de luxe theatres referred to in sub-paragraphs (a) of Petition Paragraphs 122 to 126, inclusive, are the following: (This list is subject to corrections, additions and deletions in accordance with information to be subsequently acquired by petitioner).

Theatre	City and State
	PARAMOUNT
Capitol	Atlanta, Ga.
Fox	Atlanta, Ga.
Paramount	Atlanta, Ga.
Georgia	Atlanta, Ga.
Metropolitan	Boston, Mass.
Fenway	Boston, Mass.
Paramount	Boston, Mass.
*Paramount	Brooklyn, New York City, N. Y. (Pooled with the Strand) (WB).
*Buffalo	Buffalo, N. Y. (Pooled with Loew).
*Century	Buffalo, N. Y. (Pooled with Loew).
*Great Lakes	Buffalo, N. Y. (Pooled with Loew).
*Hippodrome	Buffalo, N. Y. (Pooled with Loew).

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
Carolina	Charlotte, N. C.
Imperial	Charlotte, N. C.
State	Charlotte, N. C.
Apollo	Chicago, Ill.
Chicago	Chicago, Ill.
Garrick	Chicago, Ill.
Oriental	Chicago, Ill.
Roosevelt	Chicago, Ill.
United Artists	Chicago, Ill.
Capitol	Dallas, Tex.
Majestic	Dallas, Tex.
Melba	Dallas, Tex.
Palace	Dallas, Tex.
Rialto	Dallas, Tex.
*Des Moines	Des Moines, Iowa (Pooled with RKO)
*Paramount	Des Moines, Iowa (Pooled with RKO)
*Roosevelt	Des Moines, Iowa (Pooled with RKO)
Madison	Detroit. Mich.
Michigan	Detroit, Mich.
State	Detroit, Mich.
Kirby	Houston, Tex.
Majestic	Houston, Tex.
Metropolitan	Houston, Tex.
*Newman	Kansas City, Mo. (Pooled with RKO and 20th Century-Fox).
Malco	Memphis, Tenn.
Strand	Memphis, Tenn.
*State	Minneapolis, Minn. (Pooled with the Orpheum) (RKO).
Paramount	Newark, N. J.

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
Paramount	New Haven, Conn.
Saenger	New Orleans, La.
Tudor	New Orleans, La.
Paramount	New York City, N. Y.
*Capitol	Oklahoma City, Okla. (Pooled with the Midwest and Warner, both WB theatres.)
*Criterion	Oklahoma City, Okla. (Same as Capitol).
Omaha	Omaha, Neb.
Orpheum	Omaha, Neb.
Capitol	Salt Lake City, Utah
Paramount	Salt Lake City, Utah
Victory	Salt Lake City, Utah
*Paramount	St. Paul, Minn. (Pooled with Orpheum) (RKO)
*Riviera	St. Paul, Minn. (Pooled with Orpheum) (RKO)
*Tower	St. Paul, Minn. (Pooled with Orpheum) (RKO)
LOEW'S INC.	
Grand	Atlanta, Ga.
Century	Baltimore, Md.
Orpheum	Boston, Mass.
State	Boston, Mass.
Metropolitan	Brooklyn, New York City, N. Y.
State	Cleveland, Ohio
Stillman	Cleveland, Ohio
State	Houston, Texas
Palace	Indianapolis, Ind.
Midland	Kansas City, Mo.

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
State	Memphis, Tenn.
State	Newark, N. J.
Poli's	New Haven, Conn.
College	New Haven, Conn.
State	New Orleans, La.
Capitol	New York City, N. Y.
State	New York City, N. Y.
*Penn	Pittsburgh, Pa. (Pooled with the Stanley) (WB)
State	St. Louis, Mo.
Capitol	Washington, D. C.
Palace	Washington, D. C.
	RKO
Keith's Memorial	Boston, Mass.
Boston	Boston, Mass.
Albee	Brooklyn, New York City, N. Y.
Palace	Chicago, Ill.
*Allen	Cleveland, Ohio (Pooled with the Hippodrome)
*Palace	Cleveland, Ohio (Pooled with WB).
Palace	Cincinnati, Ohio
Albee	Cincinnati, Ohio
Capitol	Cincinnati, Ohio
Shubert	Cincinnati, Ohio
Grand	Cincinnati, Ohio
Lyric	Cincinnati, Ohio
*Orpheum	Denver, Colo. (Pooled with Loew).
*Orpheum	Des Moines, Iowa (Pooled with Paramount).

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
*Main Street	Kansas City, Mo. (Pooled with Paramount and 20th Century-Fox).
Hillstreet	Los Angeles, Calif.
Pantages	Los Angeles, Calif.
*Orpheum	Minneapolis, Minn. (Pooled with Paramount)
Proctor's	Newark, N. J.
Orpheum	New Orleans, La.
Keith's Palace	New York City, N. Y.
Brandeis	Omaha, Neb.
Golden Gate	San Francisco, Calif.
*Orpheum	St. Paul, Minn. (Pooled with Paramount)
Keith's	Washington, D. C.

WARNER BROS.

*Strand	Albany, N. Y. (Pooled with Fabian Theatres)
Stanley	Baltimore, Md.
*Strand	Brooklyn, New York City, N. Y. (Pooled with the Paramount Theatre) (Para.)
Broadway	Charlotte, N. C.
*Hippodrome	Cleveland, Ohio (Pooled with the Allen and the Palace) (RKO)
Downtown	Los Angeles, Calif.
Hollywood	Los Angeles, Calif.
Warner	Memphis, Tenn.
Warner	Milwaukee, Wis.
Branford	Newark, N. J.

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
Capitol	Newark, N. J.
Sherman	New Haven, Conn.
Strand	New York City, N. Y.
*Midwest	Oklahoma City, Okla. (Pooled with the Capitol and the Criterion) (Para.)
*Warner	Oklahoma City, Okla. (Same as the Midwest)
Aldine	Philadelphia, Pa.
Boyd	Philadelphia, Pa.
Earle	Philadelphia, Pa.
Fox	Philadelphia, Pa.
Stanley	Philadelphia, Pa.
Karlton	Philadelphia, Pa.
Keith's	Philadelphia, Pa.
Staunton	Philadelphia, Pa.
*Stanley	Pittsburgh, Pa.
Earle	Washington, D. C.
Metropolitan	Washington, D. C.

TWENTIETH CENTURY-FOX

Denver	Denver, Colo.
Broadway	Denver, Colo.
Paramount	Denver, Colo.
Tabor	Denver, Colo.
*Uptown	Kansas City, Mo. (Pooled with Paramount and RKO)
*Tower	Kansas City, Mo. (Pooled with Paramount and RKO)
Loew's State	Los Angeles, Calif.
Chinese	Los Angeles, Calif.

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Theatre	City and State
United Artists	Los Angeles, Calif.
Four Star	Los Angeles, Calif.
Wisconsin	Milwaukee, Wis.
Palace	Milwaukee, Wis.
Paramount	Portland, Ore.
Mayfair	Portland, Ore.
Orpheum	Portland, Ore.
*Fox	San Francisco, Calif. (Pooled with Para. and Loew)
*Loew's Warfield	San Francisco, Calif. (Same as the Fox Theatre)
*Paramount	San Francisco, Calif. (Same as the Fox Theatre)
*St. Francis	San Francisco, Calif. (Same as the Fox Theatre)
Fifth Avenue	Seattle, Wash.
Paramount	Seattle, Wash.
Orpheum	Seattle, Wash.
Music Hall	Seattle, Wash.
Music Box	Seattle, Wash.
Blue House /sic/	Seattle, Wash.

27(A). The defendants and their "affiliated" interests referred to in Petition Paragraph 133 are as follows:

Paramount Pictures, Inc.

Subsidiary or associated corporations:

Paramount Pictures Distributing Company, Inc., and others unknown to the petitioner.

*Pooled theatres.

Government's Bill of Particulars in United States v. Paramount

Loew's, Incorporated

Subsidiary or associated corporations:

Metro-Goldwyn-Mayer, Corporation; Metro-Goldwyn-Mayer Distributing Corporation of Texas, and others unknown to the Petitioner.

Radio-Keith-Orpheum Corporation

Subsidiary or associated corporations:

RKO Radio Pictures, Inc.; Keith-Albee-Orpheum Corporation; Pathe News, Inc.; The Van Beuren Corporation; RKO Proctor Corporation; RKO Midwest Corporation, and others unknown to the petitioner.

Warner Bros. Pictures, Inc.

Subsidiaries or associated corporations:

Vitagraph, Inc.; The Vitaphone Corporation; Warner Bros. Circuit Management Corporation, and others unknown to the petitioner.

Twentieth Century-Fox Film Corporation

Subsidiary or associated corporations:

Movietonews, Inc.; Twentieth Century-Fox Corporation of Texas; Twentieth Century-Fox Distributing Corporation; National Theatres Corporation; The Chase National Bank of the City of New York, and others unknown to the petitioner.

Government's Bill of Particulars in United States v. Paramount

Columbia Pictures Corporation

Subsidiary or associated corporations:

Columbia Pictures Corporation of California, Ltd.; Screen Gems, Inc.; Columbia Pictures of Louisiana, Inc.; Columbia Pictures Distributing Company, Inc., and others unknown to the petitioner.

Universal Corporation

Subsidiary or associated corporations:

Universal Pictures Company, Inc.; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc., and others unknown to the petitioner.

United Artists Corporation

27(B). The allegation in Petition Paragraph 113, that the motion picture industry is "dominated and controlled" in all its branches by the defendants, means that these words connote when taken in their ordinary meaning and that the defendants have monopolized, have attempted to monopolize, and have combined and conspired to monopolize and to restrain trade in the motion picture industry as described in the Petition.

28(A). The defendants referred to in Petition Paragraph 141 are the same as the defendants referred to in Petition Paragraphs 134 and 135.

31(A). Petitioner is not informed whether the gradual decrease in the number of feature films released by the major companies during the years referred to in Petition Paragraph 151 was pursuant to or the result of any con-

tract, agreement or understanding among the defendants or any of them.

31(B). Petitioner claims that the gradual decrease in the number of feature films released by the major picture companies during the years referred to in Petition Paragraph 151 has been a part of and in furtherance of and in consequence of the following monopolies, attempts to monopolize, combinations and conspiracies to monopolize and contracts, combinations and conspiracies to restrain interstate trade and commerce in the production, distribution and exhibition of motion pictures:

(1) The monopoly of, attempts to monopolize, and combinations and conspiracies to monopolize the market for the exhibition of motion pictures in first-run metropolitan theatres throughout the United States, as described in Petition Paragraphs 174 to 185, inclusive.

(2) The monopoly of, attempts to monopolize, and combinations and conspiracies to monopolize the first or preferred-run exhibition of motion pictures throughout the United States wherever any theatres affiliated with the producer-exhibitor defendants, or any one or more of them, operate or exist as described in Petition Paragraphs 186 to 198, inclusive.

Said decrease is claimed to have been part of, in furtherance of, and in consequence of the monopolies, attempts to monopolize and combinations and conspiracies to monopolize, described above, in the following manner:

(a) Because of said decrease the producer-exhibitor defendants are enabled more effectively to monopolize the market for the exhibition of first or preferred runs of motion pictures in theatres throughout the country.

Affiliated theatres are given priority and preference by all the defendants in every area where affiliated theatres are located. Thus, as the number of features released by major companies has decreased, the exhibitor defendants exercising the priority and preference granted to them have exhibited and are exhibiting a larger proportion of the total number of feature films released by the major companies than they have in previous years. Consequently, each year a smaller proportion of the total number of feature films released by the major companies has been and is available for exhibition by unaffiliated exhibitors attempting to operate a theatre on the same run as a competing affiliated theatre and said unaffiliated exhibitors have been excluded from that exhibition market.

32. The "existing arrangements among the defendants for the prior, preferential showing of their respective pictures", used in Petition Paragraph 152, are the same as the contracts, agreements, franchises and understandings referred to in Petition Paragraphs 145, 147 and 192.

33(b). The franchises and agreements referred to in Petition Paragraph 154 are selective in character in that the affiliated theatres are given the option to license some or all of the feature pictures released, or distributed during a motion picture season by the defendants. Usually the option extends to a greater number of the feature pictures released by any one defendant than the particular affiliated theatre normally exhibits. Further, affiliated theatres are not usually required to select the pictures they desire to exhibit until some time after prints thereof become available, and not until pictures to which the aforesaid option extends have been rejected by said affiliated theatres are

they available to competing unaffiliated theatres. In addition, affiliated theatres are not usually required to pay for pictures which they do not choose to exhibit.

33(D). For the purpose of this suit it is not claimed that "the licensing by distributors to large unaffiliated theatre chains in accordance with their size and extent of buying power is part of, in furtherance of, or in consequence of any of the monopolies or attempts to monopolize or contracts, combinations or conspiracies charged in the Petition".

34(B). Petitioner claims that United Artists, in refusing to sell second or subsequent runs, as alleged in Petition Paragraph 157, acted in pursuance of agreements or understandings with the other defendants.

34(C). The time or times, place or places, and the names of the parties or of the agents of the parties to each of such agreements or understandings are unknown to the petitioner; however, it is claimed that United Artists became a party thereto about 1928 and has continued a party thereto to the present. It is not known whether such agreements or understandings were oral or in writing. Petitioner does not know the substance of each such agreement or understanding. However, petitioner claims that collectively said agreements or understandings provided, in substance, that the major distributors would not sell second or subsequent runs in certain situations where there was competition with affiliated theatres.

34(D). The refusal to sell second or subsequent runs as alleged in Petition Paragraph 157 is claimed to have been in furtherance or in consequence of the "nationwide monopoly of exhibition by producer-exhibitor defendants"

described in Petition Paragraphs 186 to 198, inclusive. Said refusal is a part of, in furtherance of or in consequence of said monopoly in the following manner: In such situations independent exhibitors are prevented from engaging in the business of exhibiting motion pictures in competition with the particular producer-exhibitor defendant involved.

Petitioner reserves the right to serve upon the defendants such other and further particulars, with respect to the matters hereinbefore alleged, as may subsequently come within its knowledge.

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Solicitor for Petitioner.

THURMAN ARNOLD,
Assistant Attorney General

PAUL WILLIAMS,
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SEYMOUR SIMON,
Special Attorney

J. FRANK CUNNINGHAM,
Special Attorney

Substituted Interrogatories to the Government in *United States* v. *Paramount*

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity No. 87,273

[SAME TITLE]

SUBSTITUTED INTERROGATORIES PROPOUNDED BY CERTAIN DEFENDANTS TO PETITIONER, THE UNITED STATES OF AMERICA

PLEASE TAKE NOTICE that, pursuant to Rule 33 of the Federal Rules of Civil Procedure, you are required to serve upon each of the undersigned on or before March 1st, 1940, answers to the following interrogatories propounded by each of the defendants whose names are indicated below.*

*These substituted interrogatories are served by the following defendants: (1) Paramount Pictures, Inc., Paramount Film Distributing Corporation; (2) Loew's, Inc., Metro-Goldwyn-Mayer Corp., Metro-Goldwyn-Mayer Distributing Corp. of Texas; (3) Irving Trust Co., N. Y., New York, Trustee in Bankruptcy for Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., Pathe News, Inc., The Van Beuren Corp., RKO Proctor Corp., RKO Midwest Corp.; (4) Warner Bros. Pictures, Inc., Vitagraph, Inc., The Vitaphone Corp., Warner Bros. Circuit Management Corp.; (5) Twentieth Century-Fox Film Corp., Movietonews, Inc., Twentieth Century-Fox Corp. of Texas, Twentieth Century-Fox Distributing Corp.; (6) National Theatres Corp.; (7) Universal Corp., Universal Pictures Co., Inc., Universal Film Exchanges, Inc., Big U Film Exchange, Inc.; (8) United Artists Corp.; (9) The individual persons who have been named as defendants in the petition, who have made an appearance and as to whom the case has not been dismissed, and the individuals who have been named as defendants since the filing of the petition and who have made an appearance herein; excepting, however, Malcolm Kingsberg, Leon Goldberg and Adolph Ramish.

Substituted Interrogatories to the Government in United States v. *Paramount*

These interrogatories are served in consolidated form solely as a convenience to petitioner and are to be deemed served separately by each of said defendants. The numbers in parentheses appearing in the interrogatories refer to paragraphs of the petition, and have been inserted also for the convenience of petitioner, and information is called for according to the subject matter of the interrogatories regardless of any paragraph designations herein contained.

1. As to the charge in (174) that certain defendants have attempted to monopolize and have monopolized the market for the exhibition of motion pictures in "first run metropolitan theatres",

(a) State the identity and location of each person having knowledge of relevant facts tending to establish such charge in respect to "first run Metropolitan theatres" either throughout the United States, or in any part thereof; and as to each such person, indicate the nature of the activity, condition, complaint or charge of which he purports to have knowledge with sufficient particularity fairly to advise each defendant thereof and identify each defendant* to which such matters relate;

(b) Describe and state the location of each document containing relevant facts tending to establish such charge in whole or in part.

2. As to the charge in (174) that certain defendants have combined and conspired with each other and with the

*The word "defendant" as used in these interrogatories includes each and every predecessor, successor, subsidiary and "affiliate" of said defendant.

producer-distributor defendants, and with the distributor defendant to monopolize the market for the exhibition of motion pictures in "first run metropolitan theatres",

(a) State the identity and location of each person having knowledge of relevant facts tending to establish such charge in respect to "first run Metropolitan theatres" either throughout the United States, or in any part thereof; and as to each such person, indicate the nature of the activity, condition, complaint or charge of which he purports to have knowledge with sufficient particularity fairly to advise each defendant thereof and identify each defendant to which such matters relate;

(b) Describe and state the location of each document containing relevant facts tending to establish such charge in whole or in part.

3. As to (121), (129), (134), (135), (141), (174), (175), (183), (184) and (185), specify each instance wherein the product or pictures of any producer or distributor other than a defendant has been excluded from exhibition in a "first-run metropolitan theatre" or theatres, owned, operated or controlled by, or in which any defendant has or had any interest, and with respect to each such instance state:

(a) The name and location of such producer or distributor; and if specific pictures were excluded, the titles thereof;

(b) The name of the defendant from whose theatres such product or pictures were excluded; and if excluded from particular theatres, the name and location thereof;

(c) The approximate time or period of the exclusion;

(d) The nature of the condition, complaint or charge with sufficient particularity fairly to advise each defendant thereof;

(e) The location and a description of each document containing, and the identity and location of each person having knowledge of, relevant facts with respect thereto.

4. As to (121), (129), (134), (135), (141), (174), (175), (183), (184) and (185), specify each instance where a producer or distributor other than a defendant producer or distributor attempted to license product for exhibition in any "first run metropolitan theatre" or theatres, owned, operated or controlled by, or in which any defendant has or had any interest, and was refused, and with respect to each such instance, state:

(a) The name and location of each such producer or distributor; and if specific pictures were involved the titles thereof;

(b) The name of the defendant whose theatre or theatres were involved, and if particular theatres, the name and location thereof;

(c) The approximate time of the refusal;

(d) The nature of the occurrence, complaint or charge with sufficient particularity fairly to advise each defendant thereof;

(e) The location and a description of each document containing, and the identity and location of each person having knowledge of, relevant facts with respect thereto.

Substituted Interrogatories to the Government in United States v. Paramount

5. As to (142), (143) and (181), state the identity and location of each "independent" producer of motion pictures who or which produced motion pictures which were equivalent or superior in entertainment value to the product exhibited in any "first run metropolitan theatre" owned, operated or controlled by, or in which any defendant had or has any interest, the period of time or the exhibition season or seasons involved if specific pictures are involved, the titles thereof and if specific theatres are involved, the names and locations thereof and the name of the defendant with which "affiliated".

6. As to the charge in (182) that the defendants make their product available for exhibition in "first-run" theatres of the defendants to the exclusion generally of the motion pictures of all other producers, domestic or foreign,

(a) State the identity and location of each person having knowledge of relevant facts tending to establish such charge in respect to "first run Metropolitan theatres" either throughout the United States, or in any part thereof; and as to each such person, indicate the nature of the activity, condition, complaint or charge of which he purports to have knowledge with sufficient particularity fairly to advise each defendant thereof and identify each defendant to which such matters relate;

(b) Describe and state the location of each document containing relevant facts tending to establish such charge in whole or in part.

7. As to the charges in (120), (121), and (183), that certain defendants have dominated, controlled, and monopolized the market for the exhibition of motion pictures in

"first-run metropolitan theatres" throughout the United States, and that the incentive to "independent" production has been very much decreased by reason of the inability of "independent" producers to gain access to this market, state:

(a) The name and location of each producer who (1) has been unable to produce pictures or (2) whose incentive to do so has been decreased by reason of the facts alleged; and if specific pictures are involved, the titles thereof;

(b) The approximate period of time during which each such producer has been so affected;

(c) As to each such producer, the nature of the condition, complaint or charge with sufficient particularity fairly to advise each defendant thereof;

(d) The location and a description of each document containing, and the identity and location of each person having knowledge of, relevant facts with respect thereto.

8. As to the charge in (186) and (190) that certain defendants have attempted to monopolize and have monopolized the first or preferred run exhibition of motion pictures throughout the United States wherever any theatres "affiliated" with any one or more of said defendants operate or exist, state:

(a) State the identity and location of each person having knowledge of relevant facts tending to establish such charge in respect to "first run Metropolitan

theatres" either throughout the United States, or in any part thereof; and as to each such person, indicate the nature of the activity, condition, complaint or charge of which he purports to have knowledge with sufficient particularity fairly to advise each defendant thereof and identify each defendant to which such matters relate;

(b) Describe and state the location of each document containing relevant facts tending to establish such charge in whole or in part.

9. As to the charge in (186) and (190) that certain defendants have combined and conspired with each other, and with the producer-distributor defendants and with the distributor defendant to monopolize the first or preferred run exhibition of motion pictures throughout the United States whenever any theatres "affiliated" with any one or more of the defendants, operate or exist, state:

(a) State the identity and location of each person having knowledge of relevant facts tending to establish such charge in respect to "first run Metropolitan theatres" either throughout the United States, or in any part thereof; and as to each such person, indicate the nature of the activity, condition, complaint or charge of which he purports to have knowledge with sufficient particularity fairly to advise each defendant thereof and identify each defendant to which such matters relate;

(b) Describe and state the location of each document tending to establish such charge in whole or in part.

Substituted Interrogatories to the Government in United States v. *Paramount*

10. As to the charges in (50), (187), (189) and items 7(a) and 7(b) of the bill of particulars, to the effect that certain defendants acted in pursuance of agreements or understandings "in not going into the same competitive areas to any appreciable extent in acquiring theatre circuits" (187) 7(a) and "in the division of territory which has resulted from the acquisition of theatres by the producer-exhibitor defendants or their predecessors" (189) 7(a), state with respect to each agreement or understanding:

(a) The names of the parties thereto;

(b) The approximate time it was entered into;

(c) The areas or exhibition territories it related to;

(d) The action each exhibitor defendant took or refrained from taking as a result of such agreement or understanding;

(e) That the defendants or any of them in all the areas where they, or any of them, own, control or operate theatres, generally contract for the first run exhibition of all feature pictures produced by any of them;

(f) That the defendants impose upon subsequent run exhibitors arbitrary and unreasonable clearance and zoning schedules;

(g) That any exhibitors, or that those who have been permitted to place more films under contract than can be properly displayed in their theatres under reasonable exhibition programs, withhold product from "independent" exhibitors, and release unused pictures only

after sufficient time has elapsed to diminish their exhibition value;

(h) That "independent" exhibitors as a general rule are compelled to pay arbitrary, unconscionable and discriminatory film rentals, or to pay more for the exhibition of film upon subsequent run than an "affiliated" exhibitor paid for the same film on first run in the same competitive area;

(i) That provisions in license agreements prohibiting double features are not insisted upon in the contracts of the defendants herein with each other, whereas they are insisted upon in contracts with "independent" exhibitors;

(j) That score charges are not applied uniformly to both "affiliated" and "independent" exhibitors but that "affiliated" theatres pay score charges under about one-half of their contracts only while "independent" theatres are generally compelled to meet and pay such score charges in all situations;

(k) That any or all of the "benefits", "favors" and "advantages" referred to in paragraph (215) (1)-(6) inclusive of the petition are extended by defendants to each other and rarely, if ever, extended to "independent" exhibitors.

Dated New York, N. Y., February 2, 1940.

Government's Answers to Substituted Interrogatories

INTERROGATORY 1, (b)

The film license agreements, and other documents hereinafter described, are believed to be in the possession of the distributor and exhibitor indicated.

PARAMOUNT THEATRES

M. & P. Theatres Corporation

	Date of Contract	Distributor	Exhibitor	Period Covered
1.	11/ 8/35	Columbia Pictures Corp. Rube Jackter	M. & P. Theatres Corp. M. J. Mullin	1935-36
2.	7/16/36	"	"	1936-37
3.	11/20/34	Fox Film Corp.	Olympia Operating Co. Sampson & Pinanski Receivers M. & P. Theatres Corp. P. Siletsky	1934-35
4.	11/26/35	"	"	1935-36
5.	7/20/36	Twentieth Century Fox Film Corp.	"	1936-37
6.	11/14/34	Fox Film Corp. J. D. Clark	M. & P. Publix Corp. P. Siletsky	1934-35
7.	12/13/35	"	"	1935-36
8.	7/16/36	Twentieth Century Fox Film Corp. J. D. Clark	M. & P. Publix Corp. P. Siletsky	1936-37
9.	12/ 1/34	Paramount Pictures Distributing Co., Inc.	Metropolitan Theatre, Inc. P. Siletsky	1934-35
10.	7/ 2/36	"	"	1935-36
11.	Playing Time Contract not signed	"	"	Master Contract 2 yrs. 1936-37 1937-38
12.	12/26/34	Paramount Pictures Distributing Co., Inc.	Olympia Operating Company Sampson & Pinanski Receivers	1934-35
13.	7/ 2/36	"	"	1935-36

United Detroit Theatres Corporation

	Date of Contract	Distributor	Exhibitor	Period Covered
178.	9/ 6/35	Paramount Pictures, Inc.	United Detroit Theatres, Corp. George Trendle	1934-35
179.	5/28/36	"	"	1935-36
180.	7/20/36	"	"	1936-37
181.	9/ 9/36	RKO Distributing Corp. Jules Levy	United Detroit Theatres, Corp.	1935-36 1936-37
182.	9/31/34	Vitagraph, Inc. A. M. Smith, Jr.	United Detroit Service Corp. W. C. Patterson	1934-35
183.	8/12/35	"	"	1935-36
184.	6/ 8/36	"	United Detroit Theatres, Corp. S. M. Bunden	1936-37

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT

185.	2/ 3/28	United Artists Corp.	Publix Theatres Corp.	10/1/27 to 7/31/37

Covers theatres operated by Publix throughout the country.

186.	1/17/39	United Artists Corp. (1 Samuel Goldwyn Production)	Saenger Theatres, Inc.	1938-39 season
187.	1/17/39	United Artists Corp. (2 David O. Selznick Productions)	" " "	"
188.	1/17/39	United Artists Corp. (3 Walter Wanger Productions)	" " "	"
189.	10/10/38	United Artists Corp. (1 Walter Wanger Production)	" " "	"

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(Continued)

	Date of Contract	Distributor	Exhibitor	Period Covered
190.	10/17/38	United Artists Corp. (1 Hal Roach Production).	Saenger Theatres, Inc.	1938-39 season
191.	1/17/39	United Artists Corp. (4 Hal Roach Productions)	" " "	"
192.	1/17/39	United Artists Corp. (5 Edward Small Productions)	" " "	"
193.	1/17/39	Unted Artists Corp. (1 Alexander Korda Production)	" " "	"
194.	12/ 1/38	United Artists Corp. (2 Samuel Goldwyn Productions)	Interstate Circuit, Inc.	"
195.	12/ 1/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
196.	9/ 6/38	United Artists Corp. (1 Walter Wanger Production)	" " "	"
197.	12/ 1/38	United Artists Corp. (2 Walter Wanger Productions)	" " "	"
198.	12/ 2/38	United Artists Corp. (2 Walter Wanger Productions)	" " "	"
199.	12/ 2/38	United Artists Corp. (1 Hal Roach Production "Captain Midnight")	" " "	"
200.	12/ 2/38	United Artists Corp. (1 Hal Roach Production "Water Gypsies")	" " "	"
201.	12/ 2/38	United Artists Corp. (3 Hal Roach Productions)	" " "	"
202.	12/ 2/38	United Artists Corp. (1 Edward Small Production "Kit Carson")	" " "	"

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(Continued)

	Date of Contract	Distributor	Exhibitor	Period Covered
203.	12/ 2/38	United Artists Corp. (2 Edwards Small Productions)	Interstate Circuit, Inc.	1938-39 season
204.	9/ 1/37	United Artists Corp. (4 Alexander Korda Productions)	" " "	1937-38 season
205.	3/27/39	United Artists Corp. (1 Alexander Korda Production)	" " "	1938-39 season
206.	12/ 9/38	United Artists Corp. (2 Selznick International Productions)	Kincey	"
207.	11/ 9/38	United Artists Corp. (5 Walter Wanger Productions)	"	"
208.	11/ 9/38	United Artists Corp. (5 Hal Roach Productions)	"	"
209.	11/ 9/38	United Artists Corp. (5 Edward Small Productions)	"	"
210.	11/ 9/38	United Artists Corp. (5 Alexander Korda Productions)	"	"
211.	12/22/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Minnesota Amusement Co.	"
212.	12/22/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
213.	10/ 7/38	United Artists Corp. (1 Walter Wanger Production "Algiers")	" " "	"
214.	12/22/38	United Artists Corp. (2 Walter Wanger Productions)	" " "	"

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(Continued)

	Date of Contract	Distributor	Exhibitor	Period Covered
215.	12/22/38	United Artists Corp. (2 Walter Wanger Productions)	Minnesota Amusement Co.	1938-39 season
216.	12/22/38	United Artists Corp. (2 Hal Roach Productions)	" " "	"
217.	12/22/38	United Artists Corp. (3 Hal Roach Productions)	" " "	"
218.	12/22/38	United Artists Corp. (3 Edwards Small Productions)	" " "	"
219.	12/22/38	United Artists Corp. (1 Edward Small Production "Duke of West Point")	" " "	"
220.	12/22/38	United Artists Corp. (1 Edward Small Production "Man with the Iron Mask")	" " "	"
221.	12/22/38	United Artists Corp. (4 Alexander Korda Productions)	" " "	"
222.	11/ 1/38	United Artists Corp. (1 Alexander Korda Production "Drums")	" " "	"
223.	12/22/38	United Artists Corp. (4 Samuel Goldwyn Productions)	" " "	"
224.	12/22/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
225.	12/22/38	United Artists Corp. (3 Walter Wanger Productions)	" " "	"
226.	10/ 7/38	United Artists Corp. (1 Walter Wanger Production "Algiers")	" " "	"
227.	12/22/38	United Artists Corp. (4 Hal Roach Productions)	" " "	"

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(Continued)

	Date of Contract	Distributor	Exhibitor	Period Covered
228.	12/22/38	United Artists Corp. (3 Edward Small Productions)	Minnesota Amusement Co.	1938-39 season

The above six contracts cover suburban run exhibition in Minneapolis and St. Paul and second run exhibition in fifteen other cities.

229.	10/22/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Tri-States Theatre Corp.	1938-39 season
230.	10/22/38	United Artists Corp. (2 Selznick International Productions)	"	"
231.	10/22/38	United Artists Corp. (5 Walter Wanger Productions)	"	"
232.	10/22/38	United Artists Corp. (4 Hal Roach Productions)	"	"
233.	10/22/38	United Artists Corp. (5 Edward Small Productions)	"	"
234.	10/22/38	United Artists Corp. (1 Alexander Korda Production)	"	"
235.	9/30/38	United Artists Corp (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	"
236.	9/30/38	United Artists Corp. (2 Selznick International Productions)	"	"
237.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	"	"
238.	9/30/38	United Artists Corp. (4 Hal Roach Productions)	"	"
239.	9/30/38	United Artists Corp. (5 Edward Small Productions)	"	"
240.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	"	"

The above six contracts cover first run exhibition in Salt Lake City, Utah.

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH WARNER BROS. THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
480.	10/24/38	United Artists Corp.	Warner Bros.	1938-39 season

Covers exhibition of Samuel Goldwyn Productions in the Warner Circuit.

481.	10/24/38	United Artists Corp.	Warner Bros.	1938-39 season

Covers exhibition of David O. Selznick Productions in the Warner Circuit.

482.	10/24/38	United Artists Corp.	Warner Bros.	1938-39 season

Covers exhibition of Walter Wanger Productions in the Warner Circuit.

483.	10/24/38	United Artists Corp.	Warner Bros.	1938-39 season

Covers exhibition of Hal Roach Productions in the Warner Circuit.

484.	10/24/38	United Artists Corp.	Warner Bros.	1938-39 season

Covers exhibition of Edward Small Productions in the Warner Circuit.

485.	10/24/38	United Artists Corp.	Warner Bros.	1938-39 season

Covers exhibition of Alexander Korda Productions in the Warner Circuit.

486. United Artists clearance schedule for the Warner Circuit in Philadelphia for the 1938-39 season.

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH FOX THEATRES

	Date of Contract	Distributor	Exhibitor	Period Covered
536.	11/ 7/38	United Artists Corp.	Evergreen Theatres Corp.	1938-39 season

Covers exhibition in several hundred theatres.

Identical agreements were signed for Fox West Coast Agency, Fox Midwest Amusement Corp., Fox Inter-Mountain Amusement Corp., and Fox Wisconsin Amusement Corp.

537.	4/11/39	United Artists Corp.	Fox West Coast Theatres	1938-39 season

Covers moveover run exhibition in the Ritz Theatre in South Pasadena, California on one Samuel Goldwyn production.

538.	4/11/39	United Artists Corp.	Fox West Coast Theatres	1938-39 season

Covers moveover run exhibition in the Ritz Theatre in South Pasadena, California of two Selznick International productions.

539.	4/11/39	United Artists Corp.	Fox West Coast Theatres	1938-39 season

Covers moveover run exhibition of two Walter Wanger productions.

540.	4/11/39	United Artists Corp.	Fox West Coast Theatres	1938-39 season

Covers moveover run exhibition in the Ritz in South Pasadena, California of one Hal Roach production.*

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*The petitioner's investigation of first-run metropolitan exhibition was limited to license agreements between the various defendants covering the exhibition years 1934-35, 1935-36, and 1936-37. The foregoing lists include the license agreements voluntarily made available by the various defendants to the Department of Justice in the course of its investigation, and, in addition, certain license agreements between United Artists as distributor and other defendants as exhibitors for the exhibition season 1938-39, such as are listed under items 186 to 240, inclusive. These license agreements were made available to the petitioner in connection with the depositions of certain United Artists officers and employees taken in this action.

Certain long-term franchises are also listed, such as items 242 and 243, between Paramount as distributor and Loew's as exhibitor, dated August 1, 1927, for the period August 1, 1927, to July 31, 1937; item 185 (241) between United Artists as distributor and Paramount (Publix Theatres Corporation) dated February 3, 1928, for the period October 1, 1927, to July 31, 1937; item 423 between United Artists as distributor and RKO theatres as exhibitors, dated October 31, 1930, for the period August 1, 1930, to July 31, 1935.

In listing and enumerating the foregoing documents, of which petitioner has obtained first-hand knowledge through inspection, it is to be understood that the petitioner in no way limits its right to rely upon other agreements or documents covering periods both prior to and following those covered by the specific agreements and documents as above listed. It is understood that wherever a license agreement is referred to, it will include all deal sheets, modifications, or additions relating thereto.

Government's Answers to Substituted Interrogatories

INTERROGATORY 8(b)

In addition to the documents listed in answer to Interrogatory 1(b), which for convenience are incorporated by reference as though fully set out herein, the following are film license agreements entered into between the distributor defendants and the exhibitor defendants, as indicated.

PARAMOUNT THEATRES

M. & P. Theatres Corporation

	Date of Contract	Distributor	Exhibitor	Period Covered
1.	12/ 4/34	Paramount Pictures Distributing Co., Inc.	Olympia Operating Sampson & Pinanski Receivers	1934-35
2.	7/ 2/36	"	"	1935-36
3.	11/ 5/36	"	"	1936-37 1938-39
4.	12/ 4/34	"	"	1934-35
5.	7/ 2/36	"	"	1935-36
6.	11/ 5/36	"	"	1936-37 1937-38
7.	12/ 4/34	Paramount Pictures Distributing Co., Inc.	Olympia Operating Company Sampson & S. Pinanski Receivers	1934-35
8.	7/ 2/36	"	"	1935-36
9.	11/ 5/36	"	"	1936-37 1937-38
10.	12/ 4/34	"	Allyn Amusement Corp. P. Siletsky	1934-35
11.	7/ 2/36	"	"	1935-36
12.	11/ 5/36	"	New England Theatres, Inc. P. Siletsky	1936-37 1937-38
13.	12/ 4/34	"	Allied Theatre of Bangor P. Siletsky	1934-35
14.	7/ 2/36	"	"	1935-36
15.	11/ 5/36	"	"	1936-37 1937-38

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT

	Date of Contract	Distributor	Exhibitor	Period Covered
314.	12/ 1/38	United Artists Corp. (3 Samuel Goldwyn Productions)	Texas Consolidated Theatres, Inc.	1938-39 season
315.	12/ 2/38	United Artists Corp. (3 Samuel Goldwyn Productions)	Texas Consolidated Theatres, Inc.	"
316.	12/ 2/38	United Artists Corp. (2 Selznick International Productions)	Texas Consolidated Theatres, Inc.	"
317.	12/ 1/38	United Artists Corp. (2 Selznick International Productions)	Texas Consolidated Theatres, Inc.	"
318.	12/ 2/38	United Artists Corp. (1 Walter Wanger Production)	Texas Consolidated Theatres, Inc.	"
319.	12/ 1/38	United Artists Corp. (2 Walter Wanger Productions)	Texas Consolidated Theatres, Inc.	"
320.	9/ 6/38	United Artists Corp. (1 Walter Wanger Production "Algiers")	Texas Consolidated Theatres, Inc.	"
	Covers six named theatres.			
321.	9/ 6/38	United Artists Corp. (1 Walter Wanger Production "Algiers")	Texas Consolidated Theatres, Inc.	"
	Covers eighteen named theatres.			
322.	12/ 2/38	United Artists Corp. (4 Walter Wanger Productions)	Texas Consolidated Theatres, Inc.	"
323.	12/ 2/38	United Artists Corp. (5 Hal Roach Productions)	Texas Consolidated Theatres, Inc.	"
324.	12/ 2/38	United Artists Corp. (3 Hal Roach Productions)	Texas Consolidated Theatres, Inc.	"

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
325.	12/ 2/38	United Artists Corp. (1 Hal Roach Production "Water Gypsies")	Texas Consolidated Theatres, Inc.	1938-39 season
326.	12 /2/38	United Artists Corp. (1 Hal Roach Production "Captain Midnight")	Texas Consolidated Theatres, Inc.	"
327.	12/ 2/38	United Artists Corp. (3 Edward Small Productions)	Texas Consolidated Theatres, Inc.	"
328.	12/ 2/38	United Artists Corp. (5 Edward Small Productions)	Texas Consolidated Theatres, Inc.	"
329.	12/ 2/38	United Artists Corp. (2 Edward Small Productions)	Texas Consolidated Theatres, Inc.	"
330.	12/31/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Jefferson Amusement Co.	"
331.	12/31/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
332.	12/31/38	United Artists Corp. (4 Walter Wanger Productions)	" " "	"
333.	12/31/38	United Artists Corp. (5 Hal Roach Productions)	" " "	"
334.	12/31/38	United Artists Corp. (5 Edward Small Productions	" " "	"
335.	12/31/38	United Artists Corp. (1 Alexander Korda Production "Drums")	" " "	"
336.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	"

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
337.	9/30/38	United Artists Corp. (2 Selznick International Productions)	Intermountain Theatres, Inc.	1938-39 season
338.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	" " "	"
339.	9/30/38	United Artists Corp. (4 Hal Roach Productions)	" " "	"
340.	9/30/38	United Artists Corp. (5 Edward Small Productions)	" " "	"
341.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	" " "	"
	Above six contracts cover first run exhibition in Twin Falls, Idaho.			
342.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 season
343.	9/30/38	United Artists Corp. (2 Selznick International Productions)	" "	"
344.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	" "	"
345.	9/30/38	United Artists Corp. (4 Hal Roach Productions)	" "	"
346.	9/30/38	United Artists Corp. (5 Edward Small Productions)	" "	"
347.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	" "	"
	Above six contracts cover first run exhibition in Logan, Utah.			

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
348.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 season
349.	9/30/38	United Artists Corp. (1 Alexander Korda national Productions)	"	"
350.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	"	"
351.	9/30/38	United Artists Corp. (4 Hal Roach Productions)	"	"
352.	9/30/38	United Artists Corp. (5 Edward Small Productions)	"	"
353.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	"	"
	Above six contracts cover first run exhibition in Preston, Idaho.			
354.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 season
355.	9/30/38	United Artists Corp. (2 Selznick International Productions)	"	"
356.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	"	"
357.	9/30/38	United Artists Corp. (5 Hal Roach Productions)	"	"
358.	9/30/38	United Artists Corp. (5 Edward Small Productions)	"	"
359.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	"	"
	Above six contracts cover first run exhibition in Provo, Utah.			

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
360.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Paramor Theatre Co.	1938-39 season
361.	9/30/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
362.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	" " "	"
363.	9/30/38	United Artists Corp. (4 Hal Roach Productions)	" " "	"
364.	9/30/38	United Artists Corp. (5 Edward Small Productions)	" " "	"
365.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	" " "	"

The above six contracts cover first run exhibition in Ogden, Utah.

366.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Menmar Theatre Co.	1938-39 season
367.	9/30/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
368.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	" " "	"
369.	9/30/38	United Artists Corp.	" " "	"
370.	9/30/38	United Artists Corp. (5 Edward Small Productions)	" " "	"
371.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	" " "	"

The above six contracts cover first run exhibition in Boise, Idaho

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
372.	9/30/38	United Artists Corp. (4 Samuel Goldwyn Productions)	Intermountain Theatres, Inc.	1938-39 season
373.	9/30/38	United Artists Corp. (2 Selznick International Productions)	" " "	"
374.	9/30/38	United Artists Corp. (5 Walter Wanger Productions)	" " "	"
375.	9/30/38	United Artists Corp. (4 Hal Roach Productions)	" " "	"
376.	9/30/38	United Artists Corp. (5 Edward Small Productions)	" " "	"
377.	9/30/38	United Artists Corp. (5 Alexander Korda Productions)	" " "	"

The above six contracts cover first run exhibition in Brigham City, Utah.

Four following contracts cover Norfolk, Virginia:

378.	8/24/34	Fox Film Corp. John D. Clark	Norfolk Consolidated Corp., J. Vogel	1934-35 season
379.	8/24/34	Fox Film Corp. John D. Clark	Norfolk Consolidated Corp., J. Vogel	Cat's Paw
380.	10/17/34	Fox Film Corp. John D. Clark	Norfolk Consolidated Corp., J. Vogel	Peck's Bad Boy
476.	9/10/35	Fox Film Corp. John D. Clark	RKO Proctor Corp. J. J. O'Connor	1935-36
	9/10/35	"	"	1935-36
477.	9/ 1/36	RKO Distributing Corp. L. F. Thompson	RKO Rhode Island Corp. Jules Levy	1936-37
478.	1/15/36	"	RKO Midwest Corp. I. Libson	1935-36
479.	9/ 1/33	RKO Distributing Corp. Nod E. Depinet	Singer Sioux City Corp. Mort H. Singer	1933-38

Government's Answers to Substituted Interrogatories

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
480.	9/ 1/33	RKO Distributing Corp. Nod E. Depinet	Singer Dubuque Corp. M. H. Singer	1933-38
481.	9/ 1/33	"	Singer Cedar Rapids Corp. Mort H. Singer	1933-38
482.	9/ 1/33	"	Singer Davenport Corp. Mort H. Singer	1933-38
483.	1/16/39	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 season
484.	1/16/39	United Artists Corp. (4 Selznick International Productions)	RKO	"
485.	1/16/39	United Artists Corp. (5 Walter Wangor Productions)	RKO	"
486.	1/16/39	United Artists Corp. (5 Hal Roach Productions)	RKO	"
487.	1/16/39	United Artists Corp. (5 Edward Small Productions)	RKO	"

The above five contracts cover exhibition in the Parkhill Theatre in Yonkers, New York.

488.	9/13/38	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 season
489.	9/13/38	United Artists Corp. (5 Walter Wanger Productions)	RKO	"
490.	9/13/38	United Artists Corp. (4 Hal Roach Productions)	RKO	"
491.	9/13/38	United Artists Corp. (5 Edward Small Productions)	RKO	"

UNITED ARTISTS CONTRACTS WITH THEATRES AFFILIATED WITH PARAMOUNT—(cont'd)

	Date of Contract	Distributor	Exhibitor	Period Covered
492.	9/13/38	United Artists Corp. (2 Alexander Korda Productions)	RKO	1938-39 season
493.	11/ 7/38	United Artists Corp. (3 Alexander Korda Productions)	RKO	"

The above six contracts cover exhibition at the Keiths Theatre, Lowell, Mass.

494.	9/13/38	United Artists Corp. (4 Samuel Goldwyn Productions)	RKO	1938-39 season
495.	9/13/38	United Artists Corp. (2 Selznick International Productions)	RKO	"
496.	9/13/38	United Artists Corp. (5 Walter Wanger Productions)	RKO	"
497.	9/13/38	United Artists Corp. (4 Hal Roach Productions)	RKO	"
498.	9/13/38	United Artists Corp. (5 Edward Small Productions)	RKO	"

The above five contracts cover exhibition in the Virginia Theatre, Champaign, Illinois.

499.	9/13/38	United Artists Corp. (2 Alexander Korda Productions)	RKO	1938-39 season
500.	11/ 7/38	United Artists Corp. (3 Alexander Korda Productions).	RKO	"

The above two contracts cover exhibition in the Virginia or Orpheum Theatre, Champaign, Illinois.

Government's Answers to Substituted Interrogatories

INTERROGATORY 9.

(a) Each of the persons listed or referred to in answer to Interrogatory 8(a) has knowledge that in the area in which he is located the producer-exhibitor defendant (or defendants) indicated, has (or have) combined and conspired with each other, and with the producer-distributor defendants and with the distributor defendant to monopolize the first or preferred run exhibition of motion pictures.

(b) The documents described and listed or referred to in answer to Interrogatory 8(b) are incorporated by reference as though fully set out herein.

INTERROGATORIES 6 and 7.

The persons listed in answer to Interrogatories 3, 4, and 5 have knowledge that defendants make their product available for exhibition in first run theatres of exhibitor-defendants to the exclusion generally of pictures of independent producers, domestic and foreign; and that defendants have monopolized the market for the exhibition of pictures in first run metropolitan theatres, and that the incentive to independent producers is decreased by reason of inability to gain access to that market.

The documents described and listed in answer to Interrogatories 1(b) and 8(b), and the information set out in answer to Interrogatory No. 17 are incorporated by reference as though fully set out herein.

INTERROGATORIES 3, 4, and 5.

The following named persons have knowledge that pictures of independent producers have been excluded from

first run metropolitan theatres affiliated with exhibitor-defendants; that when independent producers have attempted to license pictures for exhibition in such theatres they have been refused; and that pictures produced by independent producers have been equivalent or superior entertainment value to the product exhibited in such theatres.

I. E. Chadwick, Chadwick Productions,
6066 Sunset Boulevard, Los Angeles, Calif.

Louis Weiss, Weiss Productions, Inc.
4376 Sunset Drive, Los Angeles, Calif.

Harry S. Webb, Reliable Pictures Corp.
6048 Sunset Blvd., Los Angeles, Calif.

A. W. Heckel, Supreme Pictures Corp.,
1509 Vine Street, Los Angeles, Calif.

Arthur Alexander, Colony Pictures,
6048 Sunset Blvd., Los Angeles, Calif.

Clifford Sanforth and Harry Spitz,
Cameo Pictures & Imperial Corp.,
4516 Sunset Blvd., Los Angeles, Calif.

John N. Hicks, Academy Pictures, Inc.
4516 Sunset Blvd., Los Angeles, Calif.

R. N. Like, International Film Studios,
4376 Sunset Drive, Los Angeles, Calif.

Leslie Simmons, Excelsior Pictures Corp.,
1033 North Cahuenga St., Hollywood, Calif.

Emanuel Cohen, Major Pictures Corp.,
1040 North Las Palmas, Los Angeles, Calif.

Fred Futter, Futter Productions Inc.
1426 North Beechwood Drive, Los Angeles, Calif.

Nat Levine, Cajo Co.,
4020 Radford Ave., North Hollywood, Calif.

Maury Cohen, Invincible Pictures Corp.,
6331 Hollywood Boulevard, Hollywood, Calif.

Carl Lesseman, Grand Nat. Dist. Corp.,
Beverly Wilshire Hotel, Beverly Hills, Calif.

Samuel Katzman, Victory Pictures Corp.,
9147 Venice Blvd., Los Angeles, Calif.

Boris Petroff, Boris Petroff Productions,
4516 Sunset Blvd., Los Angeles, Calif.

Harold Lewis, B. F. Zeidman Productions,
4516 Sunset Blvd., Los Angeles, Calif.

D. J. McCarthy, Roosevelt Hotel,
Hollywood, Calif.

Edward J. Peskay,
Paramount Building, New York City

Russell Hack,
Beverly Hills, California

Emil Goldstone,
Los Angeles, California

E. B. Derr,
Crescent Pictures Corporation,
Hollywood, California.

Howard Dale and *Milton Montgomery*, Garrick Theatre, St. Paul. Mr. Dale and Mr. Montgomery have operated the Garrick Theatre since about 1931. It has been subjected to uniform clearance by all major companies on product following first run in St. Paul. The first run the-

atres have been controlled by Paramount and RKO, which have maintained a pool in order to most effectively absorb and distribute the use of all major first run product. About 1935 all major distributors uniformly fixed minimum admission prices.

WASHINGTON, D. C.

Fred S. Kogod and *Charles H. Olive*, Atlas Theatre, Washington. Mr. Kogod and Mr. Olive have operated the Princess Theatre for a number of years and constructed the Atlas Theatre in 1932. Mr. Kogod and Mr. Olive are familiar with the fact that Warner, Loew's and RKO split all major product in Washington, D. C. In addition to its control of first run theatres, Warner operates a large circuit of subsequent run theatres. The Atlas and Princess are subjected to uniform clearance on all major product.

William E. S. Wilcox. Mr. Wilcox operated the Seco Theatre in Silver Spring, Maryland, a suburb of Washington, for a number of years. He acquired the Silver Theatre, a new deluxe theatre, in Silver Spring, in 1938. The closest affiliate competition to this theatre were two Warner houses, the Sheridan and Colony. All major distributors granted these Warner theatres clearance over the Silver. Mr. Wilcox is familiar with the control by Warner, Loew's and RKO of all major first run product in Washington, D. C. and with the fact that the clearance granted by all major companies to these first run theatres had a direct bearing upon the operation of the Seco and Silver Theatres.

2. As to Interrogatories 3, 4 and 5:

3. As to Interrogatories 6 and 7:

8. As to Interrogatories 21 and 22:

9. As to Interrogatories 23, 24, 25, and 26:

Government's Answers to Substituted Interrogatories

Since all of the above indicated interrogatories deal with the allegations of the petition on the subject of defendants' monopoly of production of feature pictures, and the monopoly of the market for feature pictures distributed by independent producers, which is constituted by first run metropolitan and first run theatres, and since petitioner's present information is general in character, it is impossible for petitioner to give specific instances as requested, except in several instances where such specific information has been made available to petitioner as indicated below.

The list of persons furnished by petitioner in its answer to Interrogatories 3, 4 and 5 was based on investigations made during 1936 and 1937. Since said answer was made there has been further investigation of some of the persons listed in Interrogatories 3, 4, and 5, and petitioner has also received information as to other persons having similar knowledge, and their names are also listed below.

CALIFORNIA

I. E. Chadwick, Chadwick Productions, 6066 Sunset Boulevard, Los Angeles, California. Mr. Chadwick has been engaged in the motion picture business for the past 35 years. He was the American representative of the Pathe Company of France in 1905 and he entered the production branch of the industry in about 1910. From 1915 until at least 1936 Mr. Chadwick has been an independent producer producing pictures under his own name. For several years preceding 1936 he served as President of the Independent Motion Picture Distributors Association.

Mr. Chadwick has knowledge of the policies of the major motion picture distributors both with respect to the distribution of their pictures and the exhibition of pictures

in theatres affiliated with them. Mr. Chadwick has knowledge that by virtue of the affiliation of major theatre circuits with the major distributors, independent producers find it extremely difficult if not impossible to distribute their pictures in those affiliated circuits. Mr. Chadwick has knowledge that the practice of block booking engaged in by all major distributors, by filling the screen time of exhibitors, makes it extremely difficult for independent producers to license their product on fair terms to such theatres.

Louis Weiss, Weiss Productions, Inc., 4376 Sunset Boulevard, Los Angeles, California. Mr. Weiss is general manager of Weiss Productions, Inc. which was formed in February 1935. Mr. Weiss has been identified with various phases of the motion picture industry for the past 30 years, having had experience as an exhibitor, exchange manager, and producer. He has been connected with the Metro studios, the F. B. O. studios in the production branch of the industry and immediately prior to his association with Weiss Productions, Inc. he was associated with Art Class Pictures Corporation. Weiss Productions specializes in the production of serial pictures and in 1935 and 1936 it produced three serials, Custer's Last Stand, The Clutching Hand, and The Black Coin. In addition it has produced one burlesque picture, The Drunkard, a four-reeler. The corporation distributes its product through state rights exchanges throughout the United States.

In the course of his experience in the motion picture industry, Mr. Weiss has acquired information concerning the production, distribution, and exhibition of motion pictures throughout the United States. Mr. Weiss has knowledge that by virtue of their control of large theatre circuits, the five major producer exhibitors favor their own product

and that of the other major producer exhibitors in their theatres to the exclusion generally of the product of independent producers. Mr. Weiss also has knowledge that the independent producers outlet is foreclosed to a large extent by virtue of the fact that under their policy of block booking the major distributors compel exhibitors to purchase their entire line of product.

Harry S. Webb, Reliable Pictures Corporation, 6048 Sunset Boulevard, Los Angeles, California. At the present time Mr. Webb is president of Metropolitan Productions which was organized about 3 years ago. Prior to that time Mr. Webb was connected with Reliable Picture Corporation which was organized in about 1932 or 1933. Mr. Webb has been engaged in the business of producing motion pictures for the past 18 or 19 years.

During the three seasons from 1933 until 1936 Reliable Pictures Corporation produced 20 features, 18 features, and 13 features, respectively. Pictures produced by Reliable Pictures Corporation were westerns and melodramas, whose average cost of production was about $6,000 for a six reel picture. The product of Reliable Pictures Corporation was distributed through state rights exchanges throughout the United States and dependent upon independent exhibitors for most of its patronage. Its product was exhibited in affiliated theatres infrequently.

On December 29, 1935 Reliable Pictures Corporation and another company (Victory Pictures, headed by Sam Katzman) purchased from the Pasadena Tournament of Roses Committee the exclusive rights to film the 1936 New Year's Day Parade and Rose Bowl Football Game, it being their plan to incorporate both events into a feature length picture. They gave appropriate notice of their

plans in the metropolitan and trade papers, and indicated that producers of news reels who released more than nominal footage of these events would be held responsible to them. The immediate reaction was a news item in the Los Angeles papers of January 1st to the effect that the majors would "black ball" the Tournament of Roses events, and some comment ostensibly from L. B. Mayer to the effect that the independents were very brazen to attempt thus to exclude majors from the scene, and that independents had no place in the industry.

Nevertheless, the scenes were taken and the feature length picture prepared and dispatched to the several states rights distributing agencies through which the Reliable Corporation releases. Commitments were made for exhibition of the picture in independent theatres, but before any showing was had a flood of telephonic and telegraphic protests descended upon Mr. Webb's office from both distributors and exhibitors to the general effect that they dared not show the picture because they had received veiled warnings from the distributing offices of those majors who released news weeklies (Fox, Universal, Warners, and M-G-M Hearst Metrotone News, etc.) to the effect that if the picture were exhibited the product of the respective majors would be withdrawn from the offending exhibitors. As a consequence, the picture received little or no showing, and Reliable suffered a loss.

Metropolitan Productions has been in existence during the past three years and during this period it has been engaged in producing western and action pictures costing between $5,000 and $10,000 per picture.

During his experience as an independent producer of pictures Mr. Webb has acquired knowledge concerning the production and distribution of motion pictures in the United

States, and of the policies of the major motion picture companies with respect to production, distribution, and exhibition. Mr. Webb has knowledge that by virtue of their affiliation with major distributors the affiliated theatre circuits favor the product of the major distributors over independent production and that by virtue of this affiliation, independent producers are precluded from reaching on fair terms the markets controlled by the affiliated chains.

A. W. Hackel, Supreme Pictures Corporation, 1509 Vine Street, Los Angeles, California. Mr. Hackel, president and general manager, has been engaged in the production branch of the motion picture industry for about the past ten years and has been engaged in the production of "western" pictures. He has produced western pictures at the rate of about ten or 15 a year and the budget for his pictures has been between $10,000 and $30,000.

Prior to 1935 pictures produced by Supreme Pictures Corporation have been distributed through various state right agencies and they were frequently sold with the product of Monogram Studios. In 1935 or 1936 a merger was effected between Monogram, Liberty Pictures and Republic Pictures and the new production company was known as Republic Productions, Inc. The distribution facilities of this new company were thereafter made available to Supreme Pictures Corporation.

In the course of his experience in producing pictures and negotiating for their distribution Mr. Hackel has acquired knowledge of conditions in the motion picture industry. Mr. Hackel has knowledge that the unlimited outlet which the affiliated chains offer for the product distributed by the major producer exhibitors makes it impossible for the independent producers to compete with the affiliated

producers on the basis of product merit. In the course of his dealings with the independent exchanges which have distributed the product of Supreme Pictures Corporation, Mr. Hackel has acquired knowledge that the theatres owned by the major distributors refuse generally to exhibit pictures produced by independent producers or accept such pictures on terms onerous to independent producers. None of Mr. Hackel's pictures has been exhibited in a theatre owned or controlled by the major distributors.

In 1937 Mr. Hackel produced "The Desert Phantom" at a cost of $12,500. This picture was previewed at the Forum Theatre on Pico Boulevard, Los Angeles, California and in spite of the fact that the picture was well received by the preview audience, Fox West Coast refused to purchase that picture for exhibition in its theatres in small towns in Southern California.

Arthur Alexander. Colony Pictures, 6048 Sunset Boulevard, Los Angeles, California. Mr. Alexander, the manager of Colony Pictures, has been connected with the motion picture business for the past 15 years. From 1926 he was abroad as a salesman for Universal Pictures, with headquarters at Frankfort-on-Main. From 1929 to 1934 he conducted a rental studio in Hollywood which he leased to independent producers. Since 1934 he has been engaged in the production of motion pictures and has been associated with Beacon Pictures, Normandy Pictures, and Colony Pictures. In the 1934-35 season Beacon Pictures produced 5 or 6 features, in 1936 Normandy Pictures produced 2 features, and in 1936 Colony Pictures produced 6 features. All productions of Beacon, Normandy, and Colony companies have been of "western" type. At the present time Mr. Alexander is engaged in producing a series of 6 pictures starring Ken

Maynard. Pictures produced by Mr. Alexander cost approximately $10,000 each and have been released through state rights exchanges.

In the course of his experience in the motion picture industry Mr. Alexander has acquired knowledge of conditions in the production, distribution, and exhibition branches of the industry. He has knowledge that the effect of compulsory block booking is to eliminate independent product from theatres in which major product is exhibited.

Clifford Sanforth and *Henry (or Harry) Spitz*, Cameo Pictures and Imperial Corporation, 4516 Sunset Boulevard, Los Angeles, California. In 1935 Messrs. Sanforth and Spitz were production managers of Cameo Pictures and Imperial Corporation which corporation was organized in 1935 in which year one picture was produced by it. In 1936 three pictures were produced and in the 1936-37 season Cameo Pictures and Imperial Corporation contemplated releasing 30 pictures. The pictures produced by this company were "weserns" in some of which Tim McCoy was starred. All distribution of these pictures was handled in New York through independent state rights exchanges. Mr. Sanforth has been engaged in the production end of the motion picture industry for a number of years and has been associated with Fox, Universal, Paramount, and Chaplin and for 12 years prior to 1936 he had been connected with independent producers. Mr. Sanforth, in the course of his connection with the motion picture industry, has acquired knowledge of the practices prevailing in the industry and of the difficulties encountered by independent producers in attempting to distribute their product. Mr. Sanforth has knowledge that the practice of block booking engaged in by the major distributors has tended to preclude independent producers from

reaching a market. Mr. Sanforth has knowledge that independent producers find it difficult, if not impossible to license their product for exhibition in affiliated circuits of theatres.

John N. Hicks, Academy Pictures, Inc., 5416 Sunset Boulevard, Los Angeles, California. Mr. John N. Hicks in 1936 was production manager of Academy Pictures, Inc. which was organized in September 1935 and in 1935 and 1936 produced two pictures, "I Conquer the Sea" and "The Revolt of the Demons". These two pictures were distributed through independent state rights exchanges. In the course of his experience as a producer of motion pictures Mr. Hicks has become familiar with the practices prevailing in the production, distribution, and exhibition of motion pictures, and he is familiar with the difficulty encountered by independent producers in attempting to license their product for exhibition at affiliated theatres.

R. N. Like, International Film Studios, 4376 Sunset Drive, Los Angeles, California. Mr. Like is the proprietor of International Film Studios. He has been engaged in the production of motion pictures for about 18 or 20 years prior to 1935. Since 1935 Mr. Like has been engaged in the business of leasing the studio which he owns to independent producers. As a producer, Mr. Like produced melodramas at the rate of about 24 yer year. The average budget for such pictures was about $12,500 and they were marketed through state rights exchanges and were generally exhibited in independent theatres.

In the course of his connection with the motion picture industry Mr. Like has become familiar with conditions prevailing in the production. distribution, and exhibition branches of the industry. Mr. Like has knowledge concerning the decrease in the number of independent producers

from 1930 until 1939. In 1930 an average of 100 independent pictures were shot in his studio and in 1939 only 4 independent pictures were made in Mr. Like's studio. Mr. Like has knowledge that the decrease in the number of independent producers has been brought about by the difficulty of distribution which has resulted from the fact that large circuits of theatres are affiliated with the major distributors who are the competitors of the independent producers and who favor their own product and that of the other major distributors in their theatres. In addition to the control by the major producers of a large number of circuits the practice of block booking is also responsible for the decrease in the number of independent pictures, for by this practice the major distributors tie up the screen time of exhibitors.

Leslie Simmons, Excelsior Pictures Corporation, 1033 N. Cohuenga Street, Hollywood, California. Mr. Simmons in 1936 was president of Excelsior Pictures Corporation and was associated with his father, Joseph Simmons in Tower Pictures Corporation and Excelsior Pictures Corporation from the beginning of 1935 until the beginning of 1937. During that time a total of 18 pictures were produced by these two companies and distributed through state rights exchanges. These were so-called "action" pictures costing between $15,000 and $25,000 per picture.

In the course of his experience in producing motion pictures and negotiating for their distribution Mr. Simmons has become familiar with conditions in the industry and has knowledge of the difficulty encountered by independent producers in distributing their product upon fair terms. By virtue of the fact that the major producer exhibitors controlled large circuits of theatres, independent producers have been unable to compete against the major producers

in the distribution of product to affiliated theatres. Independent producers are further precluded from the market because of the practice of block booking engaged in by all major distributors. As a result of this practice the screen time of exhibitors who have exhibited major product is filled and independent product is prevented from reaching those theatres upon fair terms.

Emanuel Cohen, Major Pictures Corp., 1040 North Las Palmas, Los Angeles, California. Up until 1932 Mr. Cohen was vice president of Paramount Pictures Corporation in charge of production. Major Pictures Corporation, of which Mr. Cohen is president, was organized in 1935 and it distributed all its product through Paramount Pictures Corporation. In 1936 Mr. Cohen was engaged in the production of a Mae West picture which was to be distributed by Paramount Pictures Corporation.

In the course of his experience in the motion picture industry Mr. Cohen has acquired information concerning conditions in the industry.

Fred Futter, Futter Productions, Inc., 1426 N. Beachwood Drive, Los Angeles, California. In 1936 Mr. Futter was vice president and secretary of Futter Productions, Inc. Mr. Futter entered the motion picture industry as a producer in 1930 and continued in that capacity until June 1939. Futter Productions, Inc. produced pictures known as Diversion and Wafilm Pictures. Mr. Futter devoted his attention primarily to the production of short subjects and westerns. The westerns produced by Mr. Futter cost about $15,000 and were distributed by independent state rights exchanges. Futter Productions, Inc. produced 24 shorts in 1934, 2 features and 8 shorts in 1935 and 6 features and 1 short

in 1936. Futter Productions, Inc. has distributed some of its product through RKO.

Mr. Futter has knowledge that the independent producer is at a distinct disadvantage in distributing his pictures under the present organization of the industry where theatres controlling important markets are affiliated with the major producer exhibitors. These theatres controlled by the major companies, if they exhibit independent product at all, do so upon terms onerous to the independent producer. Furthermore, the practice of block booking engaged in by the major distributors presents an almost insuperable obstacle to independent producers in their attempt to distribute their product, for block booking ties up substantially all the screen time of exhibitors who use major product. In 1934 Mr. Futter produced a short subject called "Itchy Scratchy". The picture was sold independently to Fox West Coast with payment to be made as the picture was exhibited. The film was extremely popular where exhibited, having been held over in the Fox Wilshire Theatre for two weeks and having been shown for five consecutive days at one independent theatre. Fox West Coast, however, exhibited the picture in only a few of its theatres and therefore little return was received from that film.

Nat Levine, Cajo Company, 4020 Radford Ave., N. Hollywood, California. Mr. Levine in 1936 was president of the Cajo Company, Inc., a holding company which owned and controlled the Republic Pictures Corporation and the Republic Productions, Inc. The Cajo Company, Inc., Republic Pictures Corporation, and Republic Productions, Inc. were incorporated in May 1935 under the laws of New York. These companies are a consolidation of Monogram

Pictures Corporation, Mascot Pictures Corporation, and Liberty Pictures Corporation.

During the 1935-36 season the Republic Productions, Inc. produced 28 feature pictures. During the 1936-37 season Republic Productions, Inc. contemplated the production of 56 features. All the pictures produced by Republic Productions, Inc. were distributed by Republic Pictures Corporation, which having no exchanges distributed pictures through privately owned state rights exchanges with which it had contracts.

Mr. Levine severed his connection with Cajo Company early in 1937 to produce independently. After leaving Republic Mr. Levine "discovered" Gene Autry and introduced to the industry a new type of singing western picture.

In the course of his experience in the motion picture business Mr. Levine has become familiar with the conditions and practices in the industry, and he has knowledge that, in the main, the producer-owned chains do not buy from independent producers as the independent product is usually of poor quality.

Maury Cohen, Invincible Pictures Corp., 6331 Hollywood Boulevard, Hollywood, California. Mr. Cohen organized the Invincible Pictures Corporation in March 1932 and during the next five years this company produced and distributed through state rights exchanges 31 pictures at an average cost of $25,000 to $27,000. In 1937 Mr. Cohen left the independent field and was employed by RKO for one year. After the expiration of that year he produced one picture and released it through United Artists Corporation.

During the course of his experience in the motion picture industry Mr. Cohen has become familiar with the practices and policies of the major motion picture companies and has

knowledge of the difficulty encountered by independent producers in distributing their product. Independent producers have found it difficult to license their pictures for exhibition in affiliated theatres, which are controlled by their competitors. By virtue of this control independent producers do not have an open market in which to sell their product. Mr. Cohen has knowledge further that block booking prevents the independent producer from securing adequate distribution for his product in that the practice monopolizes the playing time of theatres using major product.

Carl Lesserman, Grand National Distributing Corporation, Beverly Wilshire Hotel, Beverly Hills, California. In 1936 Mr. Lesserman was vice president and general manager of the Grand National Distributing Corporation, which was incorporated April 16, 1936 under the laws of New Jersey as a producing and distributing company. The company planned to distribute between 40 and 50 feature pictures in the 1936-37 season and it was planned to produce some pictures including a group of 6 pictures starring James Cagney. In 1936 Grand National Distributing Corporation had distributing contracts with the following Los Angeles independent producers: Douglas McLean Productions, Inc.; Petroff Productions, Inc.; B. F. Zeidman Productions, Inc.; Regal Productions, Inc.; Pacific Productions, Inc.; Boots and Saddle, Inc.; Raymond Friedge Productions, Inc., and Frank Gay.

Grand National Distributing Corporation distributed its pictures through its own chain of about 28 exchanges located in the principal cities of the United States. The company was a consolidation of First Division Pictures Company which had a chain of exchanges in the eastern part of the United States and a number of state rights

exchanges in the west. Grand National was an independent company without affiliation with any other motion picture company except Pathe, which owned the First Division Pictures Company and which had sold its producing properties to RKO in about 1928.

In 1936 Mr. Lesserman stated that he could not tell at that time what effect the producer-owned chains would have upon the Grand National Corporation. Since that time the Grand National Corporation has gone out of business.

Samuel Katzman, Victory Pictures Corporation. 9147 Venice Boulevard, Los Angeles, California. Mr. Katzman was associated with Fox Film Corporation from 1921 until 1934 in its production department. In 1934 he left the Fox Film Corporation and has been engaged in producing independent pictures. He has made a total of 37 pictures averaging $12,000 per picture.

During the course of his experience in the motion picture industry Mr. Katzman has become familiar with the conditions prevailing in that industry and particularly with the difficulty encountered by independent producers in securing adequate distribution of their product. Mr. Katzman has knowledge of the decrease in the number of state rights exchanges, as a result of which there are at the present time meagre distribution facilities available to independent producers making low priced pictures. With very few exceptions independent producers are unable to sell their product to the affiliated chains, and, as a result of block booking engaged in by the major distributors, the screen time of the exhibitors who use major product is monopolized and independent producers have been precluded from that market. Mr. Katzman also has knowledge that independent producers cannot borrow players from

the major producers as the major producers lend their players only among themselves.

Mr. Katzman was the partner of Harry S. Webb in the filming of the 1936 New Year's Day Parade and the Rose Bowl Football Game, which situation has been set forth in detail after the name of Harry S. Webb which has been listed above.

In 1939, United Artists refused to consider the distribution of a picture to cost approximately $100,000 which was to be produced by Mr. Katzman and which was to be on the order of "Stage Coach". Mr. Murray Silverstone advised Mr. Katzman that United Artists Corporation was not interested in the distribution of such a picture.

Boris Petroff, Boris Petroff Productions, 4516 Sunset Boulevard, Los Angeles, California. From 1925 to 1933 Mr. Boris Petroff was in New York City in charge of stage show production for Paramount theatres. In 1933 he went to Los Angeles for Paramount and spent the next three years producing three pictures in which Miss Mae West was starred. In January 1936 this relationship was terminated and Boris Petroff Productions was organized on August 6, 1936, of which Mr. Boris Petroff was president. A contract was entered into with Grand National Distributing Corporation, under which that company agreed to distribute 4 pictures to be produced by Boris Petroff Productions. Only one picture "Hats Off", a musical, was produced by Mr. Petroff under that arrangement and Mr. Petroff canceled his contract after that picture because Grand National did not give the picture adequate distribution. Since that time Mr. Petroff has made several attempts to produce pictures for release through major companies.

Mr. Petroff has never attempted to distribute his pictures through state rights exchanges but has always sought

to secure major release for his pictures. Upon two occasions Mr. Petroff unsuccessfully attempted to secure distribution through United Artists Corporation. In 1937 Mr. Petroff negotiated with Mr. George Schaefer in an effort to enter into a contract whereby United Artists would distribute a picture which Mr. Petroff contemplated producing at a cost of approximately $150,000. Mr. Petroff was unsuccessful in securing distribution through United Artists and as a result the picture was not produced in 1938 Mr. Petroff and Miss Mae West formed the Empire Picture Corporation and obtained financial backing for the production of a picture starring Miss West. Again negotiations were entered into with representatives of United Artists Corporation for the distribution of the picture and again the negotiations were unsuccessful.

Harold Lewis, B. F. Zeidman Productions, 4516 Sunset Boulevard, Los Angeles, California. Mr. Lewis has been engaged in the production branch of the motion picture industry for about 20 years and for several years was associated with Paramount and was also connected with Universal at one time. For about 7 years he was with Educational Pictures, Inc. and became connected with the Zeidman Productions in January of 1936. Zeidman Productions has been in business since 1931. In 1934 Zeidman Productions produced 4 pictures, in 1935 three pictures, and in 1936 three pictures, at an average cost of $40,000. Some of these features were distributed through United Artists Corporation and the remaining pictures were distributed through individual state rights exchanges.

In 1936 Zeidman Productions planned to distribute its product through Grand National. The Grand National Corp. went out of business in about 1939 and its assets were sold.

Russell Mack, Beverly Hills, California. In 1929 Mr. Mack was employed by RKO as a director and directed three pictures for RKO. Thereafter he was employed as director by Pathe, Universal, and MGM. Since 1934 Mr. Mack has attempted to finance a company for the production of motion pictures. In the course of his experience in and observation of the motion picture industry, Mr. Mack has acquired knowledge of the policies and practices of the major motion picture companies and the manner in which the five producer exhibitors by virtue of their control of theatres in key cities dominate both the distribution and exhibition of motion pictures. The five producer exhibitors at the start of each buying season enter into preferential contracts with each other and exchange pictures for playing time. In this manner each producer exhibitor is assured of a market for his product in the affiliated theatres to the detriment of independent producers. Because of the control of the defendants of theatres in key cities, there is little incentive to risk capital in independent production. In view of this condition, Mr. Mack has not as yet entered into independent production.

Phil Goldstone, Los Angeles, California. Mr. Goldstone has produced, financed, and distributed motion pictures for more than 20 years and during that time he has been interested in various independent companies and is familiar with independent production and distribution. He is the dominant factor in Majestic Pictures Corporation. In 1933 he produced "Sing Sinner, Sing", "The Sin of Nora Moran", and was executive producer of "Curtain at Eight" for the Majestic. In 1935 he produced "Age of Indiscretion", "O'Shaughnessey's Boy", and "The Last of the Pagans" for MGM. In 1939 he was president of the Inde-

pendent Motion Picture Producers Association. Mr. Goldstone has knowledge that the practice of block booking engaged in by the major distributors has almost eliminated independent production in that it has denied independent producers a fair opportunity to market their product. This opportunity is denied by virtue of the fact that block booking monopolizes the playing time of exhibitors who use major product and in this manner denies independent producers of access to those screens upon fair terms.

E. B. Derr, Crescent Pictures Corporation, Hollywood, California. At one time Mr. Derr was an associate producer for MGM. Thereafter he formed a new production company, and in 1936 he joined Republic as associate producer with Nat Levine. In 1936 and 1937 Mr. Derr produced three or four pictures for Crescent and in 1938 one picture for Monogram. In the course of his experience in the industry Mr. Derr has become familiar with the policies and practices with respect to production and distribution of motion pictures. He has knowledge that as a result of compulsory block booking on the part of the major distributors many of the theatres which exhibited major product have been closed to independent producers.

Edward J. Peskay, Paramount Building, New York, New York. Mr. Peskay has had varied experience in the motion picture industry in both the exhibition and distribution branches of the industry. He has been an independent theatre operator, and later was employed at different times by several of the major film studios on the west coast.

He has been employed by Warner Bros. in the exhibition branch of its business at Philadelphia and has also been associated with Skouras theatres. From October 1936 until

June 1938 Mr. Peskay was vice president in charge of distribution of Grand National Films, Inc.

In the course of his experience in the motion picture industry Mr. Peskay has become familiar with conditions throughout the industry and with the difficulties encountered by independent producers in attempting to distribute their product. Insofar as any markets for Grand National Films, Inc. is concerned, Mr. Peskay has knowledge that the only markets open to that company were the independent exhibitors and that affiliated theatres would not exhibit its films.

Leo J. McCarthy, Roosevelt Hotel, Hollywood, California. Mr. McCarthy is an independent producer of motion pictures. He had formerly been associated with the old First National organization as its sales and branch manager in Milwaukee. Later he had been manager of 104 theatres of the Fox Midwest organization with headquarters in Kansas City. Since that time he has been associated with Republic in the production branch of the motion picture business.

Mr. McCarthy has become familiar with the difficulties encountered by independent producers in attempting to distribute their product. Independent product may reach exhibitors through state rights exchanges but in view of the fact that the five producer exhibitors have acquired large circuits of theatres, the markets available to state rights exchanges have been seriously restricted.

In 1937 or 1938 Mr. McCarthy financed and produced a picture entitled "Assassin of Youth", which was a film dealing with the drug marijuana and which portrayed the violent effects of the use of this drug either in the form of a cigarette or in tablet form. The picture was produced upon

a set rented from Grand National. The Hayes organization refused to grant its seal of approval and in this way prevented Mr. McCarthy from entering into an arrangement to have this picture distributed either through state rights exchanges or through some of the smaller companies such as Republic, Monogram, and Grand National.

Sol Lesser, Principal Artists Productions, Los Angeles, California. Mr. Lesser has been in all branches of the motion picture industry since 1907. At the present time he is engaged in producing a picture to be released through United Artists Corporation. He has a contract with that company covering such release on the basis of 25% of its gross receipts. Prior to his present connection, he released pictures through both RKO and Twentieth Century-Fox.

Mr. Lesser has never experienced any difficulty in obtaining whatever talent or equipment he has required and does not feel that the setup, insofar as major companies loaning such talent or equipment, is wrong.

It is Mr. Lesser's opinion that any reputable producer having a story or star of value, or adequate financing to produce a good picture, can obtain distribution through a major outlet.

The only abuse which Mr. Lesser sees in the present setup is that of producer-distributor ownership of theatres. It is his belief that the chains should be divorced from producers.

Toby Anguish, Los Angeles, California. Mr. Anguish has had experience in the distribution of independently produced motion pictures from 1930 to 1937 and has knowledge of the difficulties encountered by the independent producers and distributors attempting to license their product for exhibition in theatres affiliated with the major distributors.

Government's Answers to Substituted Interrogatories

Mr. Anguish endeavored to distribute a film of the Rose Bowl Game which occurred either in 1934 or 1935 which was the game in which Texas A. and M. played. Mr. Anguish attempted to get Fox West Coast to distribute the picture but they refused to do so. Mr. Anguish finally succeeded in getting some distribution of the picture through independent exhibitors, but was unable to secure sufficient distribution and as a result the producers lost about $500.

In 1934 or 1935 Mr. Anguish endeavored to distribute a picture called "The Last Wilderness" which was concerned with the sport of archery. For about two months Mr. Anguish carried on negotiations with Fox West Coast Theatres, but the prices offered by Fox West Coast Theatres were extremely low. As a result Mr. Anguish sold the picture to Franchon and Marco for first run exhibition in San Francisco and Mr. Milton Arthur for second run. In Long Beach, California Mr. Anguish was offered $75 for the picture by Fox but secured $400 from an independent producer. Mr. Anguish attempted to distribute "The Last Wilderness", in Chicago through Balaban & Katz but they refused to handle it. In the course of Mr. Anguish's experience in endeavoring to distribute independently produced pictures all over the United States between 1930 and 1937 Mr. Anguish has become familiar with conditions throughout the industry and has knowledge that the affiliation of large chains of theatres with major producers has made it impossible for independent producers to get adequate distribution of their pictures. He also has knowledge that as a result of the practice of block booking engaged in by all major distributors, the playing time of exhibitors who use major product is monopolized and the independent producers are prevented from reaching that market.

Richard Rowland, General Service Studios, Inc., 6625 Romaine St., Los Angeles, California. Mr. Rowland has been engaged in all branches of the motion picture industry almost from its inception. At the present time he has a contract with United Artists Corporation for the release of a picture to be produced by him at a cost of approximately $650,000. Mr. Rowland does not see anything wrong with the present set-up relative to obtaining stars, equipment, etc., but does feel that theatre circuits should be divorced from producer-distributor control.

Spencer Bennett, Los Angeles, California. From 1914 to 1916 Mr. Bennett was an assistant director at Pathe. From 1916 to 1928 he was a director at Pathe, except for a two year period during which he served in the army. During four years of the time when he was a director at Pathe, he directed the Pearl White serials.

From 1928 to 1931 he was an independent director, directing eight action melodramas for Mayfair Pictures with a budget of $12,500 for each. In 1931 he directed a series of detective shorts for RKO which were called "Nick Harris, Detective". The budget for each picture was $18,000. In 1935 he directed a series of Ken Maynard Westerns for Columbia, the budget for each picture being $32,500. Subsequently he directed for Larry Darmour eight Bob Allen pictures with a budget of $25,000, a serial with Kenneth Hawks, the famous flier star, and at the present time is engaged in free-lance directing and spends most of his time directing Westerns for Monogram.

Mr. Bennett has knowledge that by virtue of their control of theatres, the major distributors control the channels of distribution and exhibition and make it impossible for independent producers to distribute their pictures on a

profitable basis. Mr. Bennett also has knowledge that block booking makes it impossible for independent producers to secure outlets for their product and as a result the number of independent producers has been decreasing during the past several years.

B. Reaves Eason, 12709 Kleig Street, North Hollywood, California. Mr. Eason has been a moving picture director for about 30 years. From 1910 until 1913 he was first acting assistant director and then full director for American Film Company which had no affiliated theatres but distributed its films through channels analogous to the present state rights exchanges. From 1913 to 1915 he was a director for Balboa Studio at Long Beach, which distributed its films through Pathe. From 1915 to 1916 he directed one picture for the Kalem Company. In 1916 he returned to Balboa Studio where he worked for six months.

During 1917 and 1918 Mr. Eason produced his own picture "Nine Tenths of the Law", in which Mitchell Lewis was starred. He sold this picture outright to a brokerage concern, Abrams & Womers, in New York. The total cost of this picture was $9,500 and it was sold for $40,000.

From 1918 to 1919 Mr. Eason was assistant director at Universal for about one year and one-half and thereafter he had a three year contract with Universal as a director, at the end of which time he left Universal for free lancing. His first position as a free lance was with Fox, for whom he directed two pictures in 1923-24. Mr. Eason worked as a director for Mr. Thomas H. Ince, an independent producer, in 1925-26. In 1927-28 Mr. Eason directed for F. B. O., where he made two pictures with Fred Thompson and thereafter he was under contract with Universal until 1930. In 1931 he spent a year directing for

Columbia. In 1932-33 he freelanced for about a year making 8 pictures for Franchon Royer. From 1933 to 1935 he spent most of his time writing and directing for Nat Levine. From 1935 to 1937 Mr. Eason worked for Warner Bros. Since that time he has been freelancing, working for Republic, Warner Bros., and Twentieth Century-Fox.

Mr. Eason has knowledge that as a result of the control by the producer-exhibitors of large circuits of theatres, and that as a result of the present method of distribution, profitable independent production is practically impossible. While Mr. Eason has thought of producing pictures on his own he has not done so since he produced "Nine Tenths of the Law" because of the difficulty encountered by independent producers in distributing their product. Mr. Eason believes that divorcement of exhibition from production and the abolition of block booking would help the independent producer by giving him a better chance for distribution but that it would hurt the quality of pictures now being produced.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, *United States* v. *Paramount*)

Agreement made this 7th day of November, 1938 by and between United Artists Corporation, hereinafter called the "Distributor", party of the first part, and Evergreen Theatres Corporation, agent for the various motion picture exhibition companies affiliated or associated with or subsidiary to Evergreen Theatres Corporation, and operating the various theatres enumerated on the Deal Sheets hereto attached, party of the second part, hereinafter called the "Exhibitor".

WITNESSETH:

Whereas, the Exhibitor is affiliated or associated with or subsidiary to various motion picture exhibition companies operating the theatres listed in the several memorandum sheets hereinafter called "Deal Sheets" in the States of Washington and Oregon, which Deal Sheets are attached hereto and made a part hereof, and,

Whereas, the Exhibitor desires to procure licenses for said affiliated, associated or subsidiary companies, to exhibit in the respective theatres operated by said respective, affiliated, associated or subsidiary companies, the feature motion picture photoplays produced and/or released by the Distributor upon the terms and conditions hereinafter set forth, and

Whereas, wherever the terms Exhibitor or Theatre is mentioned herein, shall have particular reference to the particular company operating the particular theatre mentioned, and the application herein of the Exhibitor shall be and is

hereby deemed to be the application of such respective affiliated, associated or subsidiary company.

Now, Therefore, in consideration of the mutual terms, covenants, and conditions hereof, the parties do hereby agree as follows:

FIRST:

Exhibition Contract

The parties have hereto annexed as Exhibit "A" the Distributor's 1938-39 form of exhibition contract which is hereby made a part of this agreement, except that wherever the said form of exhibition contract is in conflict or inconsistent or at variance with the provisions of this agreement, the provisions of this agreement shall govern and apply, and excepting further, that wherever the Deal Sheets are in conflict or inconsistent or at variance with the printed provisions of the said form of exhibition contract or the provisions of this agreement, the terms and conditions of said Deal Sheets shall govern and apply.

SECOND:

License

The Distributor subject to the conditions herein set forth, hereby grants to the Exhibitor a license under copyright (subject to all of the terms and conditions herein stated), to exhibit in the respective theatres listed in the

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

several Deal Sheets hereto annexed, (for first run exhibition, except as otherwise indicated on said Deal Sheets or by this agreement), the following feature motion picture photoplays (hereinafter sometimes referred to as photoplays) released by or for the Distributor for general distribution within the United States for the Season commencing on or about September 15th, 1938, and ending on or about September 15th, 1939, and the Exhibitor hereby accepts such license and shall be obligated to accept not less than the number of photoplays specified in said Deal Sheets for the respective theatres therein listed:

SAMUEL GOLDWYN PRODUCTIONS
The Lady and the Cowboy
The Daring Age
Wuthering Heights
The Last Frontier

DAVID O. SELZNICK PRODUCTIONS
The Young In Heart
Made for Each Other

WALTER WANGER PRODUCTIONS
Trade Winds
Stage Coach
A Man and His Women
Winter Carnival

HAL ROACH PRODUCTIONS
There Goes My Heart
Topper Makes a Trip
Captain Midnight
Water Gipsies

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

EDWARD SMALL PRODUCTIONS
The Duke of West Point
The Man in the Iron Mask
King of the Turf
Kit Carson . . . . Avenger or
South of Pago Pago

Additional Photoplays of 1938-39 Season

If during the aforesaid season the Distributor shall generally release in the United States any feature motion picture photoplays other than and in addition to those photoplays hereinabove in this paragraph Second enumerated, but excluding any foreign feature motion picture photoplays, then and in any such event(s) such photoplay(s) shall be offered by the Distributor to and for exhibition by the Exhibitor upon such terms as the Distributor and the Exhibitor shall mutually agree upon.

Additional Photoplays of 1939-40 Season

Any feature photoplays, except foreign photoplays, that the Distributor may sell and release as part of its program for the 1939-40 season are not licensed for exhibition hereunder to and by the Exhibitor unless the Distributor shall generally release such photoplays prior to August 1st, 1939, in which event such photoplays shall be offered by the Distributor to the Exhibitor for exhibition hereunder upon terms to be mutually agreed upon.

Agreement United Artists Corporation nd Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

THIRD:

General Release

For the purpose of this agreement, a photoplay shall be deemed to be generally released after it has been publicly exhibited in ten (10) or more representative first run situations throughout the United States, excluding strictly summer resorts, at admission prices usually charged for admission to the theatres where so exhibited excluding roadshows and preview exhibitions, if any.

FOURTH:

The photoplays licensed pursuant to the terms of this agreement and specified in Paragraph Second hereof shall be exhibited in the theatres specified on the Deal Sheets at the rentals and upon the terms and conditions thereon provided.

Each of the following photoplays:

CLASS I

SAMUEL GOLDWYN PRODUCTIONS
The Lady and the Cowboy
The Daring Age
Wuthering Heights
The Last Frontier

DAVID O. SELZNICK PRODUCTIONS
The Young in Heart
Made for Each Other

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

CLASS II

Two Walter Wanger Productions
Two Hal Roach Productions
Two Edward Small Productions

CLASS III

Two Walter Wanger Productions
Two Hal Roach Productions
Two Edward Small Productions

The photoplays licensed hereunder and to be released and delivered to the Exhibitor in Classes II and III, are as follows:

WALTER WANGER PRODUCTIONS
Trade Winds
Stage Coach
A Man and His Women
Winter Carnival

HAL ROACH PRODUCTIONS
There Goes My Heart
Topper Takes a Trip
Captain Midnight
Walter Gipsies

EDWARD SMALL PRODUCTIONS
The Duke of West Point
The Man in the Iron Mask
King of the Turf
Kit Carson . . . Avenger or
South of Pago Pago

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

CLASS I

4 Goldwyn Productions
2 Selznick Productions

in those theatres licensed to be exhibited at terms based upon a percentage of the gross box office receipts as indicated on the respective Deal Sheets shall, for the entire period of Exhibition in each such theatre, subject to the terms and conditions hereinafter specified, be exhibited at a license fee equal to

(a) Thirty (30%) per cent of such part of the gross box office receipts of each such theatre as shall equal the split figure for the regular run as is indicated for such theatre on said respective Deal Sheets, and in addition thereto,

(b) Twenty-five (25%) per cent of such part of the gross box office receipts of each such theatre as shall equal the split figure for the additional exhibition period as is indicated on the Deal Sheets, and in addition thereto,

(c) Fifty (50%) per cent of such part of said gross box office receipts, if any, for each such theatre as shall be in excess of said split figures for the cumulative periods of exhibition mentioned in sub-paragraphs (a) and (b) next preceding.

CLASS II

2 Walter Wanger Productions
2 Hal Roach Productions
2 Edward Small Productions

Twenty-five (25%) per cent of such part of the gross box office receipts of each such theatre as shall equal the split figure as is indicated for such theatre on said respective Deal Sheets, and in addition thereto,

Fifty (50%) per cent of such part of said gross box office receipts, if any, for each such theatre, as shall be in excess of said split figure.

CLASS III

2 Walter Wanger Productions
2 Hal Roach Productions
2 Edward Small Productions

Twenty-five (25%) per cent of the gross box office receipts when exhibited on a single bill program,

or

Twenty (20%) per cent of the gross box office receipts when exhibited on a double bill program.

Split Figures

Attached hereto marked Schedule "B", is a schedule of the split figures hereinabove referred to and the Distributor hereby accepts and agrees to such split figure for all purposes of this agreement.

On the Deal Sheets attached hereto, where a subsequent run is indicated, the Exhibitor shall have the right to eliminate such subsequent run if the theatre has played a prior

run. Such situations are indicated on the Deal Sheets by the word "if".

The Distributor agrees not to designate any photoplays of any producer for exhibition in CLASS II bracket until and unless the two photoplays of such producer have been designated by the Distributor for exhibition in CLASS III bracket, excepting, however, such photoplays as shall be deemed worthy of exhibition in CLASS II bracket.

The Distributor agrees that the designation of all photoplays licensed hereunder for exhibition shall be made by Mr. L. J. Schlaifer, on behalf of the Distributor, and either Mr. Spyros P. Skouras or Mr. William T. Powers, on behalf of the Exhibitor.

Notices of designations shall be promptly sent by the Distributor to Mr. Spyros P. Skouras or Mr. William T. Powers, 444 West 56th Street, New York, N. Y., or to such other persons or addresses as the Exhibitor may from time to time designate in writing.

Comparable Admission

The Exhibitor agrees that where the photoplays licensed hereunder are exhibited in theatres at a rental based upon a percentage of the gross box office receipts that the scale of admission prices charged to patrons for admission to such theatres shall be not less than the scale of admission prices charged to said patrons for admission when viewing photoplays of comparable quality which are being exhibited by the Exhibitor and distributed by Distributors other than the Distributor herein.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

Expense Basis

The photoplays licensed hereunder shall be exhibited on the basis of ten-tenths (10/10ths) for each week, allowing one-tenth (1/10th) for each weekday, two tenths (2/10ths) for each Saturday, and three-tenths (3/10ths) for each Sunday.

Comparable Advertising and Exploitation

In the theatres where photoplays are licensed hereunder to be exhibited at a rental based upon a percentage of the gross box office receipts, such photoplays so licensed will be exploited and advertised by the Exhibitor to the same extent as comparable photoplays exhibited by the Exhibitor and distributed by distributors other than the Distributor herein, excluding and excepting cooperative advertising.

Move-overs

If in any percentage situation a percentage photoplay is moved-over from one theatre to another for a continuous run without any days intervening, and at the same admission prices, the original license fee terms payable to the Distributor by the Exhibitor for any additional period of such move-overs shall be reduced by five (5%) per cent of the gross box receipts.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

Additional Playing Time

If in any flat rental situations, a photoplay(s) is held over and exhibited for a longer period than the regular policy of the theatre as indicated by the maximum number of days specified on the Deal Sheets, the rental for such photoplay(s) for such additional playing time shall be computed and paid for each additional day on the basis of fifty (50%) per cent of the pro rata daily rental required to be paid hereunder for the prior run of such photoplay.

FIFTH:

Double Bill

Except for any photoplay licensed for exhibition as hereinbefore provided at twenty-five (25%) per cent of the gross box office receipts when exhibited on a single bill program, or at twenty (20%) per cent of said gross box office receipts on a double bill program, if any other photoplay(s) licensed hereunder is or are exhibited at a license fee based upon a percentage of the gross box office receipts and is or are exhibited as part of a double bill program, a sum or sums of money representing five (5%) per cent of said gross box office receipts shall be deducted from said gross box office receipts before computing the amount of film rental payable by the Exhibitor to the Distributor on any photoplays licensed to be exhibited at a rental based upon a percentage of the gross box office receipts.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

SIXTH:

Stage Show and Vaudeville Policy

In any situation where the Exhibitor has agreed to pay a license fee based upon a percentage of the gross box office receipts, and the Exhibitor shall exhibit any of the photoplays included in this agreement with a stage show or vaudeville (consisting of at least three acts or the equivalent or more), the original percentage terms provided in this agreement shall not apply, and terms for such situation shall be mutually agreed upon between the parties prior to the exhibition of such photoplay(s).

If the parties hereto shall be unable or fail to agree upon terms, the matter shall be determined by arbitration as hereinafter provided.

SEVENTH:

Repeat Runs

Any photoplays that have been exhibited during a regular exhibition run in any theatre, the Exhibitor shall have the right to exhibit such photoplays again at any special matinee or morning performance for children, and such performance shall be without charge to the Exhibitor when such exhibition shall be in conjunction with the exhibition of another photoplay of the same Producer, playing a regular run at said theatre and if such latter photoplay be exhibited on a percentage rental basis, the Distributor shall

receive the agreed percentage on all box-office receipts received at such performance.

Such privilege shall be granted only in such cases where the repeated exhibition of the photoplay will not interfere with the clearance granted to any subsequent exhibition and there shall not be more than two feature photoplays on such programs.

EIGHTH:

Road Shows

If the Distributor shall roadshow any motion picture photoplays covered by this agreement in any city, town or zone where the Exhibitor has agreed to exhibit all or any part of the Distributor's product, the Exhibitor shall have the prior right to exhibit such motion picture photoplay(s) as a roadshow attraction at terms to be mutually agreed upon. If the parties hereto are unable or fail to agree upon such terms within ten (10) days after written notice is given by the Distributor to the Exhibitor that any such photoplay shall be roadshown, then the Distributor shall have the right to license any such photoplay to be roadshown free and clear of this agreement.

Notwithstanding any provision of Exhibit "A", if the Distributor shall roadshow any photoplay licensed by the Distributor, the Distributor shall nevertheless deliver and there shall be licensed for exhibition to and by the Exhibitor any such photoplays so roadshown upon the terms and conditions specified in this agreement.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

NINTH:

Preview and Midnight Shows

The Exhibitor is permitted to hold Previews (not "studio previews"), or midnight shows and

(a) On any photoplays for which a percentage rental is paid and which is exhibited at a Preview (not "studio preview"), the Exhibitor shall pay to the Distributor the portion of the receipts accruing on the admissions that are paid after 8:30 P. M.

(b) On any photoplay for which the rental required to be paid is a percentage of the gross receipts and which is exhibited at a Midnight Show, the receipts of the Midnight Show are to be included as part of the engagement and the rental to be paid for such Midnight Show shall be the same percentage of the gross.

(c) The Exhibitor is not obligated to exhibit any photoplay in any situation or locality where such photoplay has had a "studio preview" in any opposition theatre over which the Exhibitor has clearance. Generally all "studio previews" wherever practical shall be held in the theatres of the Exhibitor.

TENTH:

Playing Time and Policy Change

All photoplays are to be exhibited in accordance with the policy of each theatre.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

If the policy of any theatre changes, the parties are to be mutually agreed upon revision of playing time and terms, it being understood that if after the change has been made and the policy reverts back to the former policy, the terms likewise revert to the original ones agreed upon, but not as to the photoplay(s) exhibited during the time that the changed policy was in effect.

ELEVENTH:

Exhibition Dates

(a) The Distributor shall, from time to time, send each of the local offices of the Exhibitor in the following cities: SEATTLE and PORTLAND, a written notice of availability of such of the photoplays covered by the terms of this agreement, as shall, at the time of sending of such notice of availability, be available for exhibition in any of the theatres.

(b) Such notice shall not be sent unless there shall be in the possession of the local Exchange of the Distributor from which the theatre or theatres of the Exhibitor to which the notice applies is served, a positive print or prints of such photoplays, duly censored and ready and available for exhibition by the Exhibitor and if such positive prints be not so available, the notice of availability shall be null and void and the Distributors shall be required and hereby agrees to give to the Exhibitor another notice of availability when such prints are available.

(c) Within fourteen (14) days after the receipt of such notice of availability, the Exhibitor will designate the

exhibition date or dates of each such photoplay, as to the theatre in which the same is required to be exhibited hereunder by the Exhibitor, as to which notice of availability has been served, which date or dates shall be in each case within thirty (30) days from the date of availability and shall not be in conflict with the clearance granted hereunder. The Exhibitor agrees for itself and for its operating companies to cause such photoplays to be exhibited within said thirty (30) day period and Distributor agrees to make prints available for such exhibition.

(d) If the Exhibitor shall fail to designate an exhibition date or dates in accordance with the provisions of the foregoing paragraph, the Distributor may designate the exhibition date or dates for such photoplay by sending written notice thereof to the Exhibitor. Such dates so designated by the Distributor shall not be earlier than thirty days (30) nor later than forty-four (44) days from the date of availability.

In each case where a date is designated, the Exhibitor will confirm in writing, the date designated by the Distributor and in no event will it be necessary for the Distributor actually to ship or tender positive prints of any of the photoplays to the Exhibitor in order to entitle the Distributor to receive a license fee for the exhibition of such photoplay, unless the Exhibitor shall have confirmed, in writing, the exhibition dates designated by the Distributor. The Exhibitor hereby expressly waives any right which it may have in law or in equity to require the Distributor actually to ship or tender prints to the Exhibitor if the Exhibitor shall not confirm in writing the Exhibition dates fixed by the Distributor.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

(e) If the Distributor fails to serve a notice of availability to the Exhibitor within thirty (30) days from the general release date of any photoplay to any of the theatres covered by this agreement the Exhibitor, shall have the right to designate the exhibition date or dates by written notice to the Distributor, giving fourteen (14) days notice of the date or dates on which the Exhibitor desires to exhibit such photoplays and within seven (7) days from the receipt of said notice, the Distributor shall notify the Exhibitor whether or not delivery of such photoplay shall be made on the date or dates specified by the Exhibitor.

TWELFTH:

Theatre Closings

If any theatre closes for a period of eight (8) weeks or longer, the obligations hereunder as to such theatre shall be cancelled; but if such theatre reopens, this agreement shall be reinstated at the same terms (but not as to the photoplays available during the time which such theatre was closed), unless in the meantime, the Distributor shall have licensed the exhibition of such product to some other exhibitor.

THIRTEENTH:

Theatres Sold

If the Exhibitor sells or leases any theatres and the Distributor is not willing to transfer the contract for such theatre to the purchaser or lessee, then such contract shall

be cancelled, as to any obligations accruing after the date of such cancellation for any such theatre or theatres.

FOURTEENTH:

Clearance

The clearance to be granted to the Exhibitor for the various theatres, cities, towns or zone specified in this agreement, shall be mutually agreed upon by the parties hereto, and in no event shall such clearance be less favorable to the Exhibitor than that granted by the Distributor to the Exhibitor during the motion picture exhibition season next preceding the commencement of the motion picture season specified in this agreement, and provided further, unless otherwise specified in the annexed Deal Sheets, all runs are to be deemed first run in each town, situation or zone.

If the Distributor shall for any reason fail to accord to the Exhibitor the clearance herein granted by the Distributor to the Exhibitor, as to any specified theatre(s), then and in such event(s) the Exhibitor may at its option eliminate its obligation hereunder to exhibit and pay for any photoplay(s) as to which the Exhibitor is not granted clearance thereon as accorded to it hereunder. Such eliminations are to be in addition to the eliminations otherwise granted hereunder to the Exhibitor.

If the Exhibitor shall not eliminate any such photoplay(s), then the Exhibitor may exhibit same and the film rental to be paid therefore shall be reduced to such amounts and terms as shall be mutually agreed upon and upon the

failure or refusal of the Distributor and Exhibitor to agree, then such reduced amounts and terms shall be determined by arbitration. Any other clearance violation by the Distributor shall be governed by the terms of the attached Exhibition Contract.

FIFTEENTH:

First Run Seattle and/or Portland

If any photoplay is exhibited first run in SEATTLE and/or PORTLAND by any Exhibitor other than the Exhibitor herein at an adult admission price of less than twenty-five (25¢) cents, the Exhibitor shall have the privilege of eliminating any such photoplay from any and/or all of the theatres in the SEATTLE DIVISION if such photoplay is played first run SEATTLE and/or PORTLAND.

SIXTEENTH:

Censorship

In any town or city where any duly constituted authority shall prohibit the exhibition of any photoplay licensed hereunder, the Exhibitor shall be relieved of the obligation to exhibit and pay for such prohibited photoplay or photoplays.

SEVENTEENTH:

Partner's Approval

In the situations where Exhibitor requires partner's approval to deals, the Exhibitor shall advise the Distributor

within six (6) weeks from the date of this agreement of the rejection of any of the propositions included in this deal. If the Exhibitor does not advise the Distributor within such time, the Exhibitor shall be liable to the Distributor for the latter's film rentals from said situations under such deals.

EIGHTEENTH:

Bank Nights

If any photoplay(s) licensed to be exhibited hereunder at a film rental based upon a percentage of the gross box office receipts is or are exhibited with or in conjunction with Bank Night, that the Exhibitor may and is hereby authorized to deduct the actual cost of such Bank Night from the gross receipts derived from the exhibition of such photoplay(s) during the day or days when said Bank Night is conducted before computing the amount of film rental payable by the Exhibitor to the Distributor.

NINETEENTH:

Payments

All sums of money becoming due to the Distributor unless otherwise agreed upon, or any adjustments which the Exhibitor may be entitled to are to be made within seven (7) days from the last date of the exhibition of each motion picture photoplay.

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

TWENTIETH:

Tax Deductions Before Computing Percentage Film Rentals

If the Exhibitor is required to collect and/or pay any gross occupation tax or other governmental taxes based upon the gross box office receipts, the Exhibitor shall deduct any and all such taxes accruing during the exhibition of any photoplay licensed hereunder from said gross box office receipts before computing the amount of film rental payable on account of the exhibition of any photoplay hereunder licensed at a rental based upon percentage of said gross box office receipts.

TWENTY-FIRST:

Assignment

This agreement is personal and is not assignable by Exhibitor without the Distributor's prior written consent.

TWENTY-SECOND:

Arbitration

Any dispute rising between the parties hereto, or any failure of the parties to agree upon any matter, that according to the provisions of this agreement are specified to be mutually agreed upon, shall be decided by an Arbitration Committee, to be composed of Mr. L. E. Schlaifer

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

and Mr. P. Lazarus or their substitutes, selected by the Distributor, and Mr. S. P. Skouras and Mr. W. T. Powers, or their substitutes, for the Exhibitor. In case of disagreement, the above committee is to select a fifth arbitrator whose decision in any controversy will be final; in the event the committee fails to select a fifth arbitrator within three (3) days after a disagreement, either the Distributor or the Exhibitor may apply upon written notice to the other to the then acting President of the American Arbitration Society, 342 Madison Avenue, New York City, for the appointment of a fifth arbitrator and the decision of the majority of said arbitration board shall be final and binding on the parties.

Pending such arbitration, the Distributor shall deliver and the Exhibitor shall receive and exhibit and pay for all photoplays provided for in this agreement.

This agreement shall not be construed as a partnership agreement between the parties.

This agreement shall be construed in accordance with and governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers the day and year first above written.

UNITED ARTISTS CORPORATION

By L. J. SCHLAIFER

EVERGREEN THEATRES CORPORATION

By S. P. SKOURAS

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

November 21, 1938

UNITED ARTISTS

1938-39

SCHEDULE "B"—SPLIT FIGURES

As per Master Agreement dated 11/7/38

NORTHWEST DIVISION

Town	Theatre	Regular Run Days or Units		30% Per 10th	25% Per 10th
BELLINGHAM	American	3	5	135.00	108.00
	Mt. Baker	3	5	198.00	158.00
	Avalon	3	5	125.00	100.00
BREMERTON	Rialto	3	5	185.00	148.00
	Rex	2	3	50.00	40.00
EUGENE	McDonald	3	5	250.00	200.00
	Rex	2	4	83.00	66.00
EVERETT	Granada	4	6	170.00	136.00
	Everett	3	5	223.00	178.00
	Balboa	2	4	98.00	78.00
OLYMPIA	Liberty	4	6	154.00	123.00
SEATTLE	Paramount	7	10	650.00	520.00
	Fifth Avenue	7	10	843.00	674.00
	Orpheum	7	10	643.00	514.00
	Music Box	7	10	338.00	270.00
	Blue Mouse	7	10	304.00	243.00
SPOKANE	Fox	4	7	498.00	398.00
	Orpheum	3	5	300.00	240.00
	State	8	10	378.00	302.00
VANCOUVER	Castle	3	5	143.00	114.00
	Kiggins	3	5	91.00	73.00
WENATCHEE	Liberty	3	5	191.00	153.00
	Rialto	2	4	125.00	100.00

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

November 21, 1938

UNITED ARTISTS

1938-39

SCHEDULE "B"—SPLIT FIGURES

As per Master Agreement dated 11/7/38

MOVEOVER SITUATIONS

NORTHWEST DIVISION

Town	Theatre	30% Per 10th	25% Per 10th
SEATTLE	Music Box	304.00	254.00
	Blue Mouse	273.00	228.00

Form 2MB—2-38 PAGE 1 HOME OFFICE COPY Made in U.S.A.

United Artists Corporation

APPLICATIONS & CONTRACTS FOR

Exchange _____

Salesman _____

Dated .....

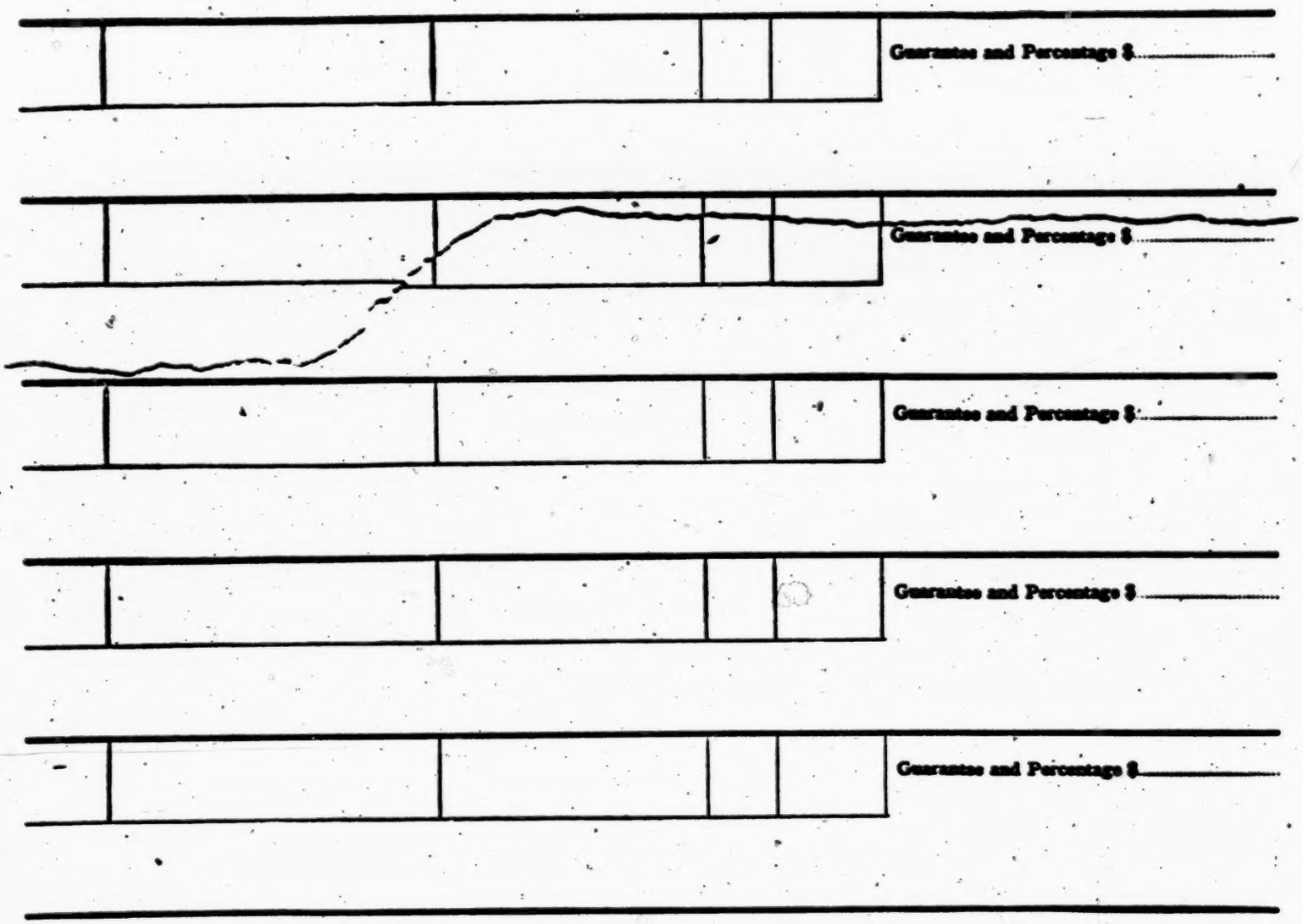
Form 41 No. .....

..... PRODUCTIONS

EIGHTEENTH: The following SCHEDULE and all the written and printed parts thereof are a part of these licenses: As and when each of the following motion picture is completed, delivered by the PRODUCER to the DISTRIBUTOR and generally released, the DISTRIBUTOR shall make such motion picture available to the EXHIBITOR:

SCHEDULE

Home Office Contract Number	TITLE OF PICTURE (Subject to Change)	STAR OR DIRECTOR	No. Consecutive Days Run and Days of Week	FLAT LICENSE FEE	TERMS
					Guarantee and Percentage $
					Guarantee and Percentage $
					Guarantee and Percentage $
					Guarantee and Percentage $
					Guarantee and Percentage $
					Guarantee and Percentage $



1. Theatre ..... 2. Town and State .....

3. Exhibitor ..... 4. Zone ..... 5. Run .....

6. Clearance .....

7. The Exhibitor agrees to charge as minimum admission when exhibiting the above.

Matinee— Adults ..... Children .....

After 5 P.M.— " ..... " .....

Special Arrangements:

The Exhibitor agrees to adhere in its advertising and publicity to the instructions issued to the Exhibitor by the Distributor, and Exhibitor agrees to lease from Distributor all advertising material used by Exhibitor to exploit and advertise the aforesaid pictures.

8.72

The Exhibitor agrees not to double-feature any picture licensed hereunder with any picture which has not been approved by the Production Code Administration of MPPDA or approved by some agency of like nature.

The Distributor and Exhibitor agree that the above motion pictures are included in one contract form for convenience only, but that as a matter of substance the application for each picture specified in the Schedule is separate and distinct from the application for any other picture specified in the schedule and each application shall be treated as distinct from any other application by the Distributor and may be accepted or rejected without reference to the accepting or rejecting of any other picture, and that each application accepted is a separate contract as to the particular picture concerned, and this instrument if accepted is to be construed as creating for each picture contracted for a separate contract containing the terms and conditions as are in this instrument contained as though there had been such a separate contract between Distributor and Exhibitor for each picture for which a contract is herein made.

APPLICATION MAY BE REJECTED IMMEDIATELY IF EXHIBITOR DOES NOT READ AND SIGN SCHEDULE AS INDICATED.

AGREED TO_____
Exhibitor

This license applies only to those pictures specifically described in the SCHEDULE, and does not include any other pictures produced by the PRODUCER whether distributed by this DISTRIBUTOR or any other Distributor.

IN WITNESS WHEREOF, the Exhibitor has on the_____day of _____19____, executed this application, which upon acceptance by the Distributor at his home office in New York City by its affixing hereto the facsimile or perforated or written signature of the proper officer, shall constitute a contract of license for the exhibition of the motion picture specified in the schedule, but only at the theatre and on the dates specified herein and in accordance with the terms and conditions hereof.

Dated the_____day of _____, 19____

Exhibitor _____ U. S.
An Individual—A Partnership—A Corporation
(Strike out two)

License
Owner (Strike out two)
Operator

ACCEPTED at New York, N. Y.
UNITED ARTISTS CORPORATION

By_____
General Manager of Distribution

By _____
Partner—General Manager—Officer
(Strike out two)

Guaranteed By

_____

END OF CONTRACT.

BEGINNING OF THE

CONTRACT OF LICENSE

The following shall constitute the contract of license for each picture for which the application of the Exhibitor is accepted by the Distributor at its home office in New York City:

LICENSE—

FIRST: The DISTRIBUTOR grants and the EXHIBITOR accepts a limited license under copyright of the motion picture for which the application is accepted and a license for use of the sound recorded therewith to exhibit publicly said motion picture and to reproduce publicly such recorded sound in synchronism therewith by use of the positive print delivered to the Exhibitor by the Distributor on the dates set in accordance with the terms hereof and specified or confirmed by the Distributor in writing. Said license does not include any exhibition prior to 8 a. m. of the first date of exhibition.

MUSIC—

SECOND: If copyrighted musical compositions are included in such recorded sound, the exhibitor warrants to have at the date of exhibition a license to perform publicly such music from the copyright proprietor thereof.

PAYMENT—

THIRD: (a) The Exhibitor agrees to pay to the Distributor the license fees in the Schedule set forth at least 7 days in advance of the fixed day of the exhibition of each picture as such days are fixed in the Schedule or in accordance with ARTICLE SEVENTH hereof. Any and all payments to be made hereunder shall be payable to the Distributor at the city in which is located the Exchange from which the Exhibitor is served.

PAYMENT UPON PERCENTAGE BASIS—TRUST FUNDS

(b) If any part of the license fee of said motion pictures shall be computed upon the exhibitor's gross receipts, such payment or part thereof shall be made to the distributor at the end of each days exhibition together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of said motion picture for which payment is so required to be made, signed by the Exhibitor or the Exhibitor's Manager and the Exhibitor's cashier or treasurer. Should the distributor so require, such itemized statement shall be made upon forms furnished by the distributor. Upon said date or dates an authorized representative of the distributor is hereby given the right to verify the sale of al tickets of admission to said theatre, and the receipts therefrom, and for such purpose shall have access to the theatre, including the box office, and also the right to examine the exhibitor's books and records relating to such gross receipts. The distributor, or its authorized representative, also shall have access for a period of one (1) year after the receipt by the distributor of each final box office statement, to all of the exhibitor's books and records for the purpose of verifying such box office statement. The distributor agrees that any information obtained pursuant to the provisions of this Clause will be treated as confidential, excepting in any arbitration proceeding, or litigation in respect to this license. The Exhibitor further agrees to segregate the Distributor's share of the gross receipts as such admission moneys are paid into the box office and not to intermingle such funds with any other moneys and to hold such percentage share of such gross receipts in trust for the Distributor and to pay over such trust funds daily as in this paragraph provided, it being intended that the Distributor's share of the gross receipts shall be exclusively the property of the Distributor from the moment it is paid into the box office.

LIQUIDATED DAMAGES FOR BREACH—

FOURTH: 1. If Licensed Upon a Flat Fee. The Exhibitor recognizes and agrees that the damage suffered by the distributor, if the exhibitor fails to exhibit and pay for any of the aforesaid motion pictures is the license fee specified in the schedule above.

2. If Licensed Upon a Percentage Basis. If payment hereunder of the license fee of any such motion picture shall be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit any such motion picture as herein provided, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit any such motion picture, a sum equal to such percentage of the average daily gross receipts in such theatre during the period of thirty (30) operating days to wit, the sixteen (16) operating days immediately prior to and the fourteen (14) days immediately after but including the date of the mailing of the notice of availability for the specific unplayed picture as set forth in ARTICLE SEVENTH Subdivision (2) and in addition any fixed sums payable hereunder in respect thereto. If the Exhibitor shall exhibit any such motion picture for less than the full number of days provided for in this license or less than the full number of days confirmed by the Distributor, the Exhibitor shall pay for each day on which he fails to exhibit the picture the Distributor's percentage of a sum equal to seventy-five percent (75%) of the gross receipts of said picture for the last day of exhibition at said theatre. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

DELIVERY OF PRINTS—

FIFTH: (1) The Distributor shall deliver a print of 2,000-foot reels or less, the length to be at the option of the Distributor, in physical condition for the exhibition contemplated herein.

(2) Delivery to the Exhibitor or the Exhibitor's authorized agent by delivery at the Distributor's Exchange, or to a common carrier, or to the United States Postal authorities, shall constitute delivery for all purposes under the terms of this agreement. Any delivery to a carrier shall be made in accordance with the carrier's delivery schedule in time to reach the place where the said theatre is located at least one hour before the usual time for the opening of said theatre.

ROAD SHOW—

SIXTH: A road show is solely under the control of the producer and is not a general release, and the producer does not deliver a picture to the distributor for general release until the completion of any such road shows. Thus said motion picture will become available to the Distributor for distribution only upon the completion

Dated the _____ day of _____, 193__

ACCEPTED at New York, N. Y.
UNITED ARTISTS CORPORATION

By _____
General Manager of Distribution

Exhibitor _____ L.S.
An Individual—A Partnership—A Corporation
(Strike out two)

By _____
Partner—General Manager—Officer
(Strike out two)

Lessee
Owner (Strike out two)
Operator

Guaranteed By

_____

END OF CONTRACT.

BEGINNING OF THE

CONTRACT OF LICENSE

The following shall constitute the contract of license for each picture for which the application of the Exhibitor is accepted by the Distributor at its home office in New York City:

LICENSE—

FIRST: The DISTRIBUTOR grants and the EXHIBITOR accepts a limited license under copyright of the motion picture for which the application is accepted and a license for use of the sound recorded therewith to exhibit publicly said motion picture and to reproduce publicly such recorded sound in synchronism therewith by use of the positive print delivered to the Exhibitor by the Distributor on the dates set in accordance with the terms hereof and specified or confirmed by the Distributor in writing. Said license does not include any exhibition prior to 8 a. m. of the first date of exhibition.

MUSIC—

SECOND: If copyrighted musical compositions are included in such recorded sound, the exhibitor warrants to have at the date of exhibition a license to perform publicly such music from the copyright proprietor thereof

PAYMENT—

THIRD: (a) The Exhibitor agrees to pay to the Distributor the license fees in the Schedule set forth at least 7 days in advance of the fixed day of the exhibition of each picture as such days are fixed in the Schedule or in accordance with ARTICLE SEVENTH hereof. Any and all payments to be made hereunder shall be payable to the Distributor at the city in which is located the Exchange from which the Exhibitor is served.

PAYMENT UPON PERCENTAGE BASIS—TRUST FUNDS

(b) If any part of the license fee of said motion pictures shall be computed upon the exhibitor's gross receipts, such payment or part thereof shall be made to the distributor at the end of each days exhibition together with a correct itemized statement of the gross receipts of said theatre for admission thereto upon the exhibition date or dates of said motion picture for which payment is so required to be made, signed by the Exhibitor or the Exhibitor's Manager and the Exhibitor's cashier or treasurer. Should the distributor so require, such itemized statement shall be made upon forms furnished by the distributor. Upon said date or dates an authorized representative of the distributor is hereby given the right to verify the sale of al tickets of admission to said theatre, and the receipts therefrom, and for such purpose shall have access to the theatre, including the box office, and also the right to examine the exhibitor's books and records relating to such gross receipts. The distributor, or its authorized representative, also shall have access for a period of one (1) year after the receipt by the distributor of each final box office statement, to all of the exhibitor's books and records for the purpose of verifying such box office statement. The distributor agrees that any information obtained pursuant to the provisions of this Clause will be treated as confidential, excepting in any arbitration proceeding, or litigation in respect to this license. The Exhibitor further agrees to segregate the Distributor's share of the gross receipts as such admission moneys are paid into the box office and not to intermingle such funds with any other moneys and to hold such percentage share of such gross receipts in trust for the Distributor and to pay over such trust funds daily as in this paragraph provided, it being intended that the Distributor's share of the gross receipts shall be exclusively the property of the Distributor from the moment it is paid into the box office.

LIQUIDATED DAMAGES FOR BREACH—

FOURTH: 1. If Licensed Upon a Flat Fee. The Exhibitor recognizes and agrees that the damage suffered by the distributor, if the exhibitor fails to exhibit and pay for any of the aforesaid motion pictures is the license fee specified in the schedule above.

2. If Licensed Upon a Percentage Basis. If payment hereunder of the license fee of any such motion picture shall be computed either in whole or in part, upon a percentage of the gross admission receipts of said theatre, and if the Exhibitor fails or refuses to exhibit any such motion picture as herein provided, the Exhibitor shall pay to the Distributor as liquidated damages for each day that the Exhibitor fails or refuses to exhibit any such motion picture, a sum equal to such percentage of the average daily gross receipts in such theatre during the period of thirty (30) operating days to wit, the sixteen (16) operating days immediately prior to and the fourteen (14) days immediately after but including the date of the mailing of the notice of availability for the specific unplayed picture as set forth in ARTICLE SEVENTH Subdivision (2) and in addition any fixed sums payable hereunder in respect thereto. If the Exhibitor shall exhibit any such motion picture for less than the full number of days provided for in this license or less than the full number of days confirmed by the Distributor, the Exhibitor shall pay for each day on which he fails to exhibit the picture the Distributor's percentage of a sum equal to seventy-five percent (75%) of the gross receipts of said picture for the last day of exhibition at said theatre. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

DELIVERY OF PRINTS—

FIFTH: (1) The Distributor shall deliver a print of 2,000-foot reels or less, the length to be at the option of the Distributor, in physical condition for the exhibition contemplated herein.

(2) Delivery to the Exhibitor or the Exhibitor's authorized agent by delivery at the Distributor's Exchange, or to a common carrier, or to the United States Postal authorities, shall constitute delivery for all purposes under the terms of this agreement. Any delivery to a carrier shall be made in accordance with the carrier's delivery schedule in time to reach the place where the said theatre is located at least one hour before the usual time for the opening of said theatre.

ROAD SHOW—

SIXTH: A road show is solely under the control of the producer and is not a general release, and the producer does not deliver a picture to the distributor for general release until the completion of any such road shows. Thus said motion picture will become available to the Distributor for distribution only upon the completion of any such road show. However, the Distributor agrees that should any motion picture be "road-shown" in the immediate vicinity of the Exhibitor's theatre, in the same zone, as that word is understood in motion picture parlance, this contract for the exhibition of said motion picture may, at the option of either party, be cancelled by written notice given to the other party within 15 days after the commencement date of such roadshow. Otherwise this agreement remains in full force and effect.

FIXING EXHIBITION DATES—

SEVENTH: The exhibition date or dates of each motion picture, unless definitely specified or otherwise provided for in the Schedule, or otherwise agreed upon in writing, shall be as follows:

(1) Should any picture hereunder not be generally released by September 15, 1939, either party hereto may cancel this contract for that picture by giving written notice to the other within ten days after September 15, 1939. Should such written notice not be given the contract will remain in full force and effect.

(2) Within a reasonable time after the delivery by the producer, and acceptance by the distributor of the print of any picture hereunder, or under any other contract with the distributor, the distributor agrees to mail to the exhibitor a notice in writing of the date when such motion picture will be available for exhibition by the Exhibitor, such date being hereinafter referred to as the available date. Such notice shall be mailed to the exhibitor at least fifteen days prior to the available date therein specified.

(3) The Exhibitor shall, within fourteen days after the mailing of such notice, select exhibition date or dates, such dates to be within the period commencing with the available date and ending thirty days thereafter, by giving to the Distributor written notice of the date or dates so selected. If the exhibition date or dates so selected by the Exhibitor are not open to the Exhibitor, the Distributor shall so notify the Exhibitor, and in such event the exhibition date or dates shall be as provided in the following paragraphs (a) and (b):

(a) If other dates within the same period are open, the Distributor shall notify the Exhibitor thereof, and the Exhibitor agrees immediately to select from such open dates another date or dates. Should the Exhibitor fail so to do, the Distributor may, at its option, either declare the contract to be in default, or designate in

CONTINUED ON PAGE 2

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

Agreement United Artists Corporation and Evergreen Theatres Corporation (Government Exhibit 199, United States v. Paramount)

writing such date or dates within the period begin. not earlier than two weeks and ending not later than six weeks from the date first selected and give written notice thereof to the Exhibitor fourteen days before the date so designated by the Distributor. The Exhibitor must immediately confirm such dates to the Distributor, and should the Exhibitor not confirm the date so designated, the Exhibitor shall be in default under this contract.

(b) If no other dates within the said thirty days are open, then the Exhibitor shall designate the date or dates which shall be, within the period beginning not earlier than two weeks, and ending not later than six weeks from the last day of the said thirty days, and written notice thereof shall immediately be given or mailed to the Distributor by the Exhibitor. If the Exhibitor fails to so designate such date or dates, then the Distributor may, at its option, either declare the contract to be in default, or designate in writing such date or dates within the period beginning not earlier than two weeks and ending not later than six weeks from the date first selected by the Exhibitor, and give written notice thereof to the Exhibitor fourteen days before the date so designated by the Distributor. The Exhibitor must immediately confirm such dates to the Distributor, and should the Exhibitor not confirm the date so designated, the Exhibitor shall be in default under this contract.

(4) In the event of EXHIBITOR'S failing to designate exhibition date or dates for any motion picture as in this contract provided, or should the EXHIBITOR default in any other contract he has with the DISTRIBUTOR, then and thereupon any sum or sums of money or other fixed consideration payment of which is provided for hereunder shall ipso facto become due and payable by the EXHIBITOR to the DISTRIBUTOR, anything to the contrary in this contract notwithstanding, and the clearance period provided in this contract with respect to any motion picture shall be revoked. If payment hereunder of the license fee of any motion picture is to be computed in whole or in part upon the percentage of the gross admission receipts of said theatre, damages shall be computed as per all applicable percentage pictures as agreed upon in paragraph "FOURTH", subdivision (2) hereof from the last day of the fifteen (15) days after the mailing of the notice of availability as set forth in paragraph "SEVENTH", subdivision (2) above which notice of availability was sent concerning the picture in the dating of which the EXHIBITOR is in default.

(5) The date or dates fixed or determined as in this Article provided shall be for all purposes the exhibition date or dates of the motion pictures as though set in the Schedule before execution hereof by the Exhibitor.

(6) The exhibitor is cognizant that the Distributor is bound by contract to cause the motion pictures distributed by it to be exhibited in the several territories in sequence of the general release of such pictures in each respective exchange territory. Therefore, pursuant thereto, the Exhibitor agrees that any motion picture for the license of which it contracts with the Distributor in the sequence of the notices of availability given the Exhibitor by the Distributor, and that this order of exhibition shall be of the essence of this and the other license agreements entered into by the parties hereto.

RETURN OF PRINTS BY EXHIBITOR—

EIGHTH: (a) After each exhibition hereunder, the Exhibitor agrees promptly as instructed in writing by the Distributor, either to return the prints to the Distributor's Exchange, or to deliver the same to a carrier designated by the Distributor or to deliver such print to another exhibitor, and in any case to pay all transportation charges thereon adequately valued and insured.

(b) In the event the Exhibitor is obligated by such written instructions to deliver any such print to another exhibitor, and fails so to do, and should the Distributor suffer damages thereby, the Exhibitor agrees to pay any and all such damages.

LOSS OF OR DAMAGE TO PRINTS—

NINTH: (a) The Exhibitor shall immediately notify the Distributor's Exchange by telegram of the loss, theft or destruction of or damage to any print between the delivery to and the return thereof by the Exhibitor, and in such event, the Exhibitor agrees to pay to the Distributor a sum equal to the cost of replacement for each print lost thereof.

(b) The Exhibitor agrees that all claims by him on account of the condition of or the late or non-arrival of a print shall be barred hereunder unless such claim shall be made by telegram, setting forth fully the condition complained of, within twenty-four hours after the exhibition date determined hereunder.

CUTTING OR ALTERATION OF PRINTS—

TENTH: The exhibitor shall exhibit each picture in its entirety and shall not copy, duplicate, subrent, or part with possession of any print thereof nor shall the exhibitor cut or alter the same, excepting to make necessary repairs thereto, or when required by any duly authorized public official or authority or with the written or telegraphic consent of the distributor, and the exhibitor shall return each print in the same condition as received, reasonable wear only excepted.

CLEARANCE AND RUN—

ELEVENTH: (a) Provided the Exhibitor is not in default hereunder, the Distributor agrees to observe the Clearance specified in the schedule hereof.

(b) If the Exhibitor is granted hereunder a second or subsequent run, the Distributor shall have the right in its sole discretion to advance the Exhibitor's run, and the Exhibitor agrees to exhibit any motion picture the run of which is thus advanced in accordance therewith, even though the Exhibitor's run thus becomes a first run and there are no runs prior thereto.

ADVERTISING PRIOR TO FIRST RUN—

TWELFTH: If the Exhibitor is granted hereunder a second or subsequent run, the Exhibitor agrees not to advertise any picture to be delivered hereunder except by means of advertisements inside the said theatre not intended for removal therefrom by the public, prior to the exhibition of any such picture by any other exhibitor having the right to the first or prior run thereof. In the event of any violation of this clause the Exhibitor agrees to pay to the Distributor a sum equal to the damage, if any, so caused such other Exhibitor, and the Distributor may, at its option, terminate the license granted hereunder for that picture or any other picture to be delivered by the Distributor. The Distributor, however, shall not be liable for any breach of the provisions of this article caused by any other exhibitor.

TAXES—

THIRTEENTH: The exhibitor shall pay to the distributor upon demand any tax, fee or other like charge now or hereafter imposed upon the delivery, or the exhibition or upon the sums payable under this license, by the exhibitor to the Distributor.

IMPOSSIBILITY OF PERFORMANCE—

FOURTEENTH. Neither party shall be liable unto the other for a default caused by force majeure.

C. O. D. SHIPMENTS:

FIFTEENTH: Exhibitor hereby expressly grants Distributor the right to demand and receive, as a condition precedent to delivery of the print or sound records of any motion picture contracted for hereunder, payment of all amounts then due Distributor by Exhibitor under this or any other exhibition contract between the parties hereto and Distributor may require such payment of all sums then due by means of C. O. D. shipment or otherwise.

WAIVER—

SIXTEENTH: A waiver by either party of any breach or default of the other party shall not be construed as a waiver of any other or subsequent breach or default of such other party. No notice of availability sent after an Exhibitor's breach as described in "SEVENTH (4)" above, shall be construed as or constitute a waiver of such breach.

VERBAL PROMISES; CHANGES MUST BE IN WRITING—

SEVENTEENTH: This license agreement is complete, and all promises, representations, understandings and agreements in reference thereto have been expressed herein. No change, modification or assignment hereof shall be binding upon the distributor unless in writing signed by an officer or any person duly authorized by the Distributor in its main office in New York City.

The right of the Distributor to approve or reject this application or any other application signed by the Exhibitor of the same type at any other time is not dependent upon the approval or rejection by the Distributor of this application or of any other application.

CONTINUED ON PAGE 3

Agreement United Artists and Warner Bros. Circuit Management Corporation (Government Exhibit 382, *United States* v. *Paramount*)

[Letterhead of]

WARNER BROS. CIRCUIT

MANAGEMENT CORPORATION

321 WEST 44TH STREET

NEW YORK

September 30, 1936

EXECUTIVE OFFICES

Mr. Joseph Bernhard
Warner Bros. Circuit
321 West 44th Street
New York, N. Y.

Dear Joe:

I am reducing to memorandum form understanding of the discussions we have had the past few weeks concerning the terms for the United Artists product for the year 1936-37. This memorandum covers the same houses that were included in the general agreement covering the 1935-36 product.

There are twenty-six (26) pictures involved excluding THE LAST OF THE MOHICANS, which picture you have under contract. DODSWORTH is included in the new deal.

Agreement United Artists and Warner Bros. Circuit Management Corporation (Government Exhibit 382, United States v. Paramount)

Five (5) Goldwyn Productions as follows:—

DODSWORTH
COME AND GET IT
IN LOVE AND WAR
WOMEN CAN BE WRONG
SHAKE HANDS WITH MURDER

TERMS:

2 at 35%
3 at 30%

Five (5) Selznick Productions as follows:—

GARDEN OF ALLAH
TOM SAWYER
RONALD COLMAN PRODUCTION
MAN WITH YOUNG WIFE
A STAR IS BORN

TERMS:

2 at 35%
3 at 30%

Six (6) Wanger Productions as follows:—

WUTHERING HEIGHTS
HISTORY IS MADE AT NIGHT
PERSONAL HISTORY
WE LIVE ONLY ONCE
ALL LADIES ARE WOMEN
DESERT INTRIGUE

TERMS:

2 at 35%
2 at 30%
2 at 25%

Agreement United Artists and Warner Bros. Circuit Management Corporation (Government Exhibit 382, United States v. Paramount)

Six (6) Korda Productions as follows:

I, CLAUDIUS
KNIGHT WITHOUT ARMOR
REMBRANDT
THE DIVORCE OF LADY X
MAN WHO COULD WORK MIRACLES
MEN ARE NOT GODS (M. Hopkins)

TERMS:

2 at 35%
1 at 30%
1 at 25%
2 at 20% or Flat

One (1) Pickford-Lasky Production as follows:

GAY DESPERADO

TERMS: 30%

One (1) Elizabeth Bergner Production as follows:

DREAMING LIPS

TERMS: 25%

Two (2) Criterion Productions as follows:—

ACCUSED
HIGH TREASON

TERMS: 2 at 20% or flat

Agreement United Artists and Warner Bros. Circuit Management Corporation (Government Exhibit 382, United States v. Paramount)

The following is our understanding with reference to the eight (8) pictures designated at 35%:

We are to receive 35% if any or all reach the average gross attained by the two (2) pictures from Fox, two (2) from R.K.O., two (2) from Paramount and two (2) from Warner Bros. nationally designated to play at 35% during the season of 1936-37. On those pictures designated at 35% we are to receive 50% of the excess receipts over and above the average described above. On such of these 35% pictures that do less than the above described average, the percentage is to be reduced down to a minimum of 30% of the gross—in steps of 1% of the film rental for each 3% less than said average gross, computed in the same manner as the 30% group outlined below.

The following is our understanding with reference to the pictures designated at 30%:

We are to receive 30% if any or all reach the average of all the nationally designated 30% pictures from the four (4) companies mentioned in the above paragraph. If any one or all of these pictures gross more than the average of the pictures from the four (4) companies mentioned above, then on such pictures we are to receive 50% of the excess. If any of these pictures gross less than the average, the rental shall drop to a minimum of 25% of the gross in accordance with the following formula:

Between the average and 4% less than the average—29%;
Between the average and 8% less than the average—28%;
Between the average and 12% less than the average—27%;
Between the average and 19% less than the average—26%;
Between the average and 26% less than the average—25%;

Agreement United Artists and Warner Bros. Circuit Management Corporation (Government Exhibit 382, United States v. Paramount)

Double Feature Allowance on 35% Pictures:

Theatre is to deduct the actual cost of the second feature from the gross on those pictures designated at 35% if played double feature.

Double Feature Allowance on 30% Pictures:

On five (5) of the pictures designated at 30%, theatre is to deduct the actual cost of the second feature from the gross. On the remaining five (5) 30% pictures, theatre is to be allowed to deduct 5% from the terms if played on double bill. However, on this second group of the five (5) 30% pictures on which the theatre is allowed to deduct 5% from the terms, United Artists is to receive at least a minimum of 25% of the gross subject to the following; if the picture earns less than 30%, but more than 25%, the theatre will settle at 25%. However, if any of these five (5) pictures actually revert to 25% by the above formula, theatre is to be allowed to deduct the actual cost of the second feature from the gross and then United Artists is to receive 25%.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in *United States* v. *Paramount*)

UNITED ARTISTS CORPORATION

with

PUBLIX THEATRES CORPORATION

Agreement

DATED, FEBRUARY 3RD, 1928.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

February 3rd, 1928.

United Artists Corporation,
729 Seventh Avenue,
New York, N. Y.

Gentlemen:

The undersigned Publix Theatres Corporation, a New York corporation, who is about to execute an agreement with you of even date herewith do hereby agree with you that the following shall be incorporated and be a part of said agreement to the same full extent as if recited therein. That in addition to the internationally known actors and actresses recited in said contract, Mary Pickford Fairbanks (Mary Pickford), Norma Talmadge, Gloria Swanson, Charles Chaplin, and Douglas Fairbanks, there shall be and are included Roland Colman and or Vilma Banky to the same full extent and for the same purposes as if they were recited and referred to in said contract as the above named actors and actresses are recited and referred to in said agreement.

IN WITNESS WHEREOF the undersigned does hereto attach its corporate seal this third day of February, 1928.

PUBLIX THEATRES CORPORATION

By Sam Dembow, Jr. (signed)
V. P.

Accepted:

UNITED ARTISTS CORPORATION,

By Joseph M. Schenck (signed)

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

THIS AGREEMENT made and entered into as of the 3rd day of February, 1928, by and between UNITED ARTISTS CORPORATION, a Delaware corporation, hereinafter called "DISTRIBUTOR," party of the first part, and PUBLIX THEATRES CORPORATION, a New York corporation, hereinafter called "EXHIBITOR," party of the second part,

WITNESSETH:

WHEREAS, the Distributor is engaged in distributing to theatres throughout the United States of America and elsewhere, high-class special feature photoplays of internationally known actors, actresses, producers and others, and has contracts for varying periods with Mary Pickford Fairbanks (Mary Pickford), Norma Talmadge, Gloria Swanson, Charles Chaplin and Douglas Fairbanks, and with Joseph M. Schenck (whose contract has been assigned by Mr. Schenck to the Art Cinema Corporation), for the production of special feature photoplays in which John Barrymore and Corinne Griffith will appear as stars, respectively, and for special feature photoplays to be directed by D. W. Griffith, Herbert Brenon, Fred Niblo and others, respectively; and has contracts with Samuel Goldwyn and Samuel Goldwyn, Inc., for special feature photoplays to be produced under the direction and management of Samuel Goldwyn; and with Inspiration Pictures, Inc., and Edwin Carew, for the distribution of a motion picture directed by Edwin Carew, entitled "RAMONA"; and

WHEREAS, the Exhibitor is engaged in the operation, directly or indirectly, and or in affiliation, and or in partici-

pation, and or through booking contracts or arrangements for a large number of first-class motion picture theatres, and or other theatres, in important cities of the United States of America, as defined in Subdivision (e) of Article I, in which motion pictures and particularly important special feature photoplays are exhibited for first-run as hereinafter defined; and

WHEREAS, the Distributor, recognizing the great value to it and to its artists and producers for advertising purposes and for economic advantages and otherwise to have motion pictures which are distributed by it exhibited in the theatres, of the Exhibitor's circuit, as defined in Subdivision (e) of Article I, desires to enter into an arrangement with the Exhibitor whereby those certain special feature photoplays distributed by the Distributor during the period of this contract, and more specifically hereinafter described in this contract, shall be exhibited in the aforesaid theatres; and

WHEREAS, the Exhibitor recognizing the established good will of the artists, directors and producers whose photoplays are distributed through the Distributor, and the great value of such photoplays to the Exhibitor, desires to secure the right to exhibit in the theatres of the Exhibitor's circuit the photoplays to be distributed during the period of this contract and more specifically hereinafter described; and

WHEREAS, the Distributor represents that it has full right and authority to contract for the exhibition of the

photoplays provided to be exhibited in the theatres of the Exhibitor's circuit pursuant to the terms of this contract, to the extent and in the manner more specifically hereinafter set forth, subject, however, to procuring the necessary written consents of the various owners of the photoplays distributed, or to be distributed, by the Distributor, as more specifically hereinafter provided for; and

WHEREAS, the Exhibitor represents that it has full right and authority to contract for the exhibition of the photoplays provided to be exhibited in its circuit, pursuant to the terms of this agreement, to the extent and in the manner more specifically hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained and for other good and valuable considerations moving from each party to the other, the receipt whereof by each party is hereby acknowledged, the Distributor and the Exhibitor have agreed, and do hereby agree, as follows:

I. The following terms as used in this agreement shall be deemed to have the following meaning:

(a) The term "photoplay" and special feature photoplay shall mean picture, and the term "motion picture" shall mean photoplay and special feature photoplay

(a) 1. The expression "gross receipts" or "gross box office receipts" when used in this agree-

ment, shall mean the total admission receipts at the box office or elsewhere, less any tax imposed by any governmental authority on or in respect to such admissions or admission receipts.

(b) The term "special feature photoplay" means and includes a photoplay of more than four thousand lineal feet enfolding a continuous entertaining story, in which

(1) either a star enumerated in this contract appears;

(2) or a star, favorably comparable to those stars enumerated in this contract, appears;

(3) or if the star who appears in the photoplay be a new star or a feature player, not favorably comparable to the above-mentioned stars, then the photoplay must be directed by a director enumerated in this contract, such as Mr. D. W. Griffith, Mr. Fred Niblo, Mr. Herbert Brenon, Mr. Henry King and others favorably comparable to them;

(4) or a photoplay directed by Mr. Fred Niblo, Mr. Herbert Brenon, Mr. Henry King, Mr. D. W. Griffith or directors favorably comparable to them;

(5) or a photoplay produced by producers enumerated in this contract, such as Mr. Joseph M. Schenck, Mr. Sam Goldwyn and others favorably comparable with them, and whose quality must be

favorably comparable to the average quality and general character of those photoplays that have been released for exhibition purposes by the United Artists Corporation in the United States of America or the Dominion of Canada during the past three years.

(c) The term "first run" shall mean and include the earliest public exhibition or exhibitions, for which an admission fee is charged, of any given photoplay in any theatre or other place to which the public is admitted within the territory, (determined in each case as hereinafter provided) at any given theatre of the Exhibitor's circuit, exclusive, however, of any earlier public exhibitions of any photoplay arranged by, or conducted for the account of, the producer or distributor of such photoplay in any theatre or theatres within any such territory, for which admission prices during such earlier public exhibitions are charged, which are at least fifty per cent. (50%) in excess of the prevailing admission prices charged for photoplays of similar quality in so-called first run motion picture theatres within the same territory, and in no event less than a minimum admission fee of one dollar and fifty cents ($1.50) for orchestra seats at evening performances; such prior exhibition being referred to in this contract as "road show."

(d) The term of this agreement shall mean the entire period effective from October 1, 1927, and ending July 31, 1937.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

Beginning July 31, 1931, and every year thereafter, the Exhibitor may terminate this agreement as of the next succeeding July 31st, providing Mr. Joseph M. Schenck, now chief executive of the Distributor, ceases to occupy such position of chief executive, by giving a written notice to the Distributor to that effect at least one year prior to the end of the particular year that this contract is to terminate.

Beginning July 31, 1931, and every year thereafter, the Exhibitor may relieve itself of the obligation to exhibit, pursuant to the provisions of this contract, the photoplays produced by the Art Cinema Corporation, one of the producers and owners of photoplays distributed by Distributor, providing Mr. Joseph M. Schenck, now chief executive of the said Art Cinema Corporation, ceases to occupy such position of chief executive of such corporation, by giving a written notice to the Distributor to that effect at least six months prior to the date of the termination of that part of this contract relating to the exhibition of such photoplays of said Art Cinema Corporation, but such termination of that portion of this contract relating to the exhibition of the said photoplays of Art Cinema Corporation shall not apply to the photoplays of the Art Cinema Corporation then being distributed by the Distributor, and any photoplay or photoplays upon which the production has been substantially completed at the time that this contract pertaining to the Art Cinema Corporation's photoplays is terminated, and subject also that in all other respects the provisions of this contract shall remain bind-

ing upon the parties hereto to the same full extent as if such termination had not taken place.

Beginning July 31, 1931, and every year thereafter, the Distributor may terminate this agreement as of the next succeeding July 31st, providing Mr. Adolph Zukor, now chief executive of Paramount Famous Lasky Corporation, which owns the controlling interest of the Exhibitor, ceases to occupy such position in the Paramount Famous Lasky Corporation; and providing also that Mr. Samuel Katz, now chief executive of the Exhibitor, ceases to occupy such position in the Publix Theatres Corporation, by the Distributor giving a written notice to the Exhibitor to that effect at least one year prior to the end of the particular year that this contract is to terminate.

In the event of either the Distributor or the Exhibitor having the right to terminate this agreement as aforesaid, or of the Exhibitor having the right to terminate this agreement as regards the photoplays produced by the Art Cinema Corporation and distributed by Distributor, and failing so to do, then and thereupon such rights shall accrue to the Distributor and/or the Exhibitor respectively, upon the successor to either Mr. Joseph M. Schenck in his respective position as regards the Distributor or in his respective position in the Art Cinema Corporation, or Mr. Adolph Zukor and Mr. Samuel Katz in their respective positions in the aforesaid corporations, ceasing to occupy such positions, subject to the same written notice to be given to the

other party at least one year prior to July 31st of the year that such contract shall be so terminated.

The above provision shall apply to each successor to the aforesaid successors of said Joseph M. Schenck in his respective positions, and of said Adolph Zukor and Samuel Katz in their respective positions during the period of this agreement.

(e) The term "Exhibitor's circuit" means and includes the theatres in the cities, towns and communities listed in the annexed Schedule "A," during the term of this contract, operated, managed, and/or booked by the Exhibitor and in which the Exhibitor and or Paramount Famous Lasky Corporation, or any of its or their subsidiaries or affiliated interests, have proprietary interest direct or indirect, and for which theatres the Exhibitor shall have the right and authority to contract for and book motion pictures; and the term shall include any such theatres in cities, towns and communities other than those listed in the said Schedule, which the Distributor and the Exhibitor may hereafter by mutual agreements, in writing, from time to time, bring within the provisions of this contract.

11. Distributor hereby grants to the Exhibitor, and the latter accepts, the license under the respective copyrights, or otherwise, of the several special feature photoplays to be distributed during the term of this contract by the Distributor, to exhibit in the order of availability for the number of days and in the particular theatres set forth in Schedule A for and during the period commencing with

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

the first day of October, 1927, and continuing to July 1, 1937, unless sooner terminated as in subdivision "d," Article I of this agreement provided.

III. The Distributor and Exhibitor agree that the Exhibitor shall be obliged to exhibit not exceeding 15 special feature photoplays of the Distributors from August 1, 1927 to August 1st, 1928; and thereafter not exceeding 14 special feature photoplays per year. The expression "year" shall mean each period of 52 consecutive weeks during said period calculating from the 31st day of July, 1928.

IV. It is agreed that the written approval to this contract of the owners or producers of all photoplays which are now being distributed or which are to be distributed by the Distributor under now existing contracts between the Distributor and such owners or producers, excepting motion pictures in which Charlie Chaplin appears or directs or is owner of, must be obtained before this contract is binding. Unless and until written approvals by all of such owners and producers now under contract with the Distributor (except as aforesaid), shall have been signed by such producers and/or owners before March 1, 1928, then this agreement shall be of no force and effect unless the Exhibitor and Distributor, by mutual written agreement, agree that it shall be applicable to the exhibition of special feature photoplays of the owners and/or producers who shall have given such written approvals.

It is further understood and agreed that the Distributor shall provide in all contracts hereafter made by the Dis-

tributor with producers, artists and/or others, that all photoplays distributed by the Distributor thereunder shall be subject to exhibition under this contract, unless otherwise agreed by the Distributor and the Exhibitor.

It is agreed that the Distributor may include in the photoplays that are to be covered by this contract, the so-termed Charlie Chaplin photoplays, by giving a written notice to that effect to the Exhibitor at its office in the Paramount Building, New York City, New York, such notice to be given on or before February 1, 1929, if and after the said Charlie Chaplin shall have elected to approve exhibition of his respective photoplays under this contract, and this contract shall cover and include exhibition of such photoplays delivered to the Distributor after the date of such notice to the Exhibitor with the same effect as if the approval of said Charles Chaplin had been given contemporaneously with the other approvals aforesaid.

V. The terms and conditions under which the Exhibitor shall have the right to exhibit the special feature photoplays in its theatres and upon which the Distributor will supply such special feature photoplays for exhibition in the theatres of the Exhibitor's circuit are as follows:

A. The Distributor agrees:

(a) To grant and does hereby grant to Exhibitor license or licenses under the respective copyrights or otherwise of the several motion picture photoplays to be released by Distributor hereunder during the period of this agreement, to exhibit each of such motion pic-

ture photoplays in the theatres of the exhibitor set forth in Schedule A hereof; such license or licenses to be specifically for the exhibition of such motion picture photoplays in each of said theatres on the exhibition day or dates determined as hereafter provided, and for no other purpose;

(b) To notify Exhibitor in writing at the Exhibitor's office in the Paramount Building, New York City, N. Y., at least four weeks in advance of the date on which each such special feature photoplay (as hereinabove defined) to be released by the Distributor shall be available for exhibition and within week after giving of said notice will deliver to the Exhibitor at its main office in New York City a positive copy of said photoplay for screen examination; and the Exhibitor shall, within two weeks from the date of such notice of availability, notify the Distributor in writing at the Distributor's principal office in the City of New York of exhibition dates for each such photoplay for each of the theatres of the Exhibitor's circuit listed in Schedule A; where time of such exhibition is for seven or more days, such date of exhibition shall begin not more than 45 days from the date of availability specified by the Distributor in such notice of availability; and the Exhibitor shall, within four weeks of the date of such notice of availability, notify the Distributor in writing at the Distributor's said New York office of exhibition dates for each of such feature photoplays in other theatres of Schedule A, date for such other theatres to begin not more than 90 days from the date of availability specified

by the Distributor in such notice of availability as to all such other theatres, provided, however, that when the protection afforded to aforesaid theatres will conflict with the carrying out of the foregoing provisions as to play date, or the protection afforded to such theatres other than the theatres of the Exhibitor's circuit as set forth in said Schedule A in the respective territories, will conflict with the carrying out of the foregoing provisions as to play dates, then the exhibition of such feature photoplays shall commence within one week from the expiration of the protection afforded the theatres in question;

(c) To use its best efforts to release such photoplays for exhibition at regular intervals so that approximately one of the photoplays shall be released in every three weeks of the aforesaid fifty-two weeks' period and be available every three weeks during the period as nearly as may be practical. In no event shall the Exhibitor be required, without its consent, to exhibit more than two photoplays in any period of six (6) consecutive weeks.

B. Distributor and Exhibitor agree that:

(a) The period of exhibition for each special feature photoplay in the theatres of the Exhibitor's circuit shall be the number of days provided for in the said Schedule "A" which is part hereof and in any Schedules or agreements supplemental thereto. When the period is not less than one (1) week, then such period shall include a Saturday or a Sunday, if exhibition on Sunday be lawful and if the regular operating

policy of the theatre includes operation on Sundays and the particular picture may be exhibited on Sunday. If a holiday falls in the particular week, the period shall include such holiday. The days of the period of such exhibition shall be consecutive. A week shall mean either six (6) days or seven (7) days, according to the regular operating policy of the particular theatre. When the period of such exhibition of any such special feature photoplay in any particular theatre or theatres shall be for less than one (1) week, each such photoplay distributed by the Distributor shall be so dated that out of the total number of such theatres at least one-half of them will play the pictures on a Saturday or Sunday or both, as nearly as may be.

(b) The Distributor will use its best efforts in each instance to have a positive print (in first class condition) of each of the photoplays to be exhibited from time to time by the Exhibitor under this agreement at the exchange of the Distributor nearest each theatre of the Exhibitor's circuit in which such photoplay is to be exhibited, available for delivery to the Exhibitor in time for the exhibition on the exhibition dates for such theatre. Delivery of such positive prints with reels, containers and other appropriate accessories by the Distributor to the Exhibitor at the Branch Office of the Distributor nearest each such theatre of the Exhibitor's circuit, or to a common carrier, or the United States Postal Authorities for mailing, or to any authorized agent of the Exhibitor, shall be deemed delivery by the Distributor to the Exhibitor hereunder.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(c) The Distributor will not license, or permit the exhibition (except as a "road show" as defined and upon the conditions named in Paragraph [c] of Article I hereof), of any photoplay licensed or to be licensed for exhibition under this contract, at any theatre or other place to which the public is admitted and for which an admission fee is charged, in the same territory (determined as hereinafter provided), in which a theatre or theatres set forth in Schedule "A," Exhibitor is or are located until the expiration of the period following the completion of the run of each respective photoplay at the particular theatre set forth in Schedule "A," which period shall be called the "protection period," and shall be determined as hereinafter provided.

It is understood and agreed that the Exhibitor shall be entitled to the usual protection from time to time prevailing, which the Exhibitor receives in respect to other motion pictures in connection with the respective theatres, and in the event that the parties hereto shall be unable to agree upon the protection period in respect to any one or more of said theatres, then and in such event the matter shall be referred first to the committee hereinafter provided, and if such committee shall fail to act or be unable to agree upon the same, within fourteen (14) days after the question shall have been submitted to it, the matter of protection shall be fixed by arbitration as hereinafter provided for, and pending the determination of the same, the Exhibitor shall be entitled to and shall receive the protection which it is then receiving on Para-

mount pictures with respect to such theatre. The territory with respect to which such protection shall prevail as to each particular theatre shall be similarly determined either by mutual agreement, or failing that, by said committee, or failing that, by arbitration as aforesaid, and pending such determination, the territory covered by such protection shall be the same with respect to which the Exhibitor is then receiving protection on Paramount pictures.

C. The Exhibitor agrees:

(a) To accept, and does hereby accept, the license or licenses hereinabove granted and will exhibit each special feature photoplay supplied by the Distributor hereunder up to the maximum number per period or year hereinabove provided, in the respective theatres set forth in Schedule "A," and pursuant to the terms and provisions of this contract, and will not allow any positive print thereof to leave the possession of the local theatre management during the specified period for the exhibition thereof by the Exhibitor as herein provided for, or permit the exhibition of such positive at any other time or place than that determined as herein provided;

(b) To exhibit each of the said special feature photoplays in the respective theatres of the Exhibitor's circuit for the number of days and upon the specific date or dates provided for in this contract and/or in the schedules pertaining to each of such theatres in such circuit, and/or in any schedules or agreements supple-

mentary hereto (unless otherwise agreed upon in writing), and in accordance with the following provisions:

(1) The Exhibitor shall notify the Distributor in the manner hereinbefore provided of the exhibition dates selected for each such special feature photoplay, in each theatre of the circuit in which the same is to be exhibited hereunder.

(c) To pay all delivery, express or other transportation charges for the delivery from the nearest exchange of the Distributor to the respective theatres, and the return from said respective theatres to such Exchange, of the positive prints of each photoplay supplied hereunder, and for the delivery and return of containers used in connection with said photoplay, and to return each positive print received by it with the reels and containers furnished therewith, to the Exchange of the Distributor from which the theatre of the Exhibitor using any positive print is served, or if directed by the Distributor to ship such positive print elsewhere than to such Exchange, transportation charges collect, immediately after the last exhibition of such positive print licensed hereunder, in the same condition as when received by the Exhibitor, reasonable wear and tear due to the proper use thereof excepted. Delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor to a carrier designated or used by the Distributor, and proper receipt therefor by the Exhibitor, shall constitute the return of such positive print by the Exhibitor. If the Exhibitor,

or any of its agents, fail to return or delay the return, of any positive print to the Distributor, or fail to forword or delay forwarding (as directed by the Distributor), any such print, the Exhibitor agrees to pay to the Distributor damage, if any, which the Distributor may be required to pay to any other Exhibitor damaged thereby; and to pay to the Distributor, as liquidated damages, the cost of replacement of each lineal foot of positive print destroyed or injured in any way while the same is in the possession of the Exhibitor;

(d) To purchase and or lease from the Distributor, and pay for at list prices, all posters, lithographs, circulars, lobby displays or other advertising matter relating to the several photoplays of the Distributor to be exhibited hereunder, as the said Exhibitor may order;

(e) That the Exhibitor and its agents will not use or permit to be used any posters, lithographs, circulars, lobby displays or other advrtising matter received from the Distributor to advertise, announce or exploit any motion picture other than the motion picture to which such advertising matter related;

(f) That the Exhibitor will not make or permit its employees or agents to make any changes or interpolations, modifications, additions or eliminations of any kind in the photoplays to be supplied hereunder, or any part thereof, including titles and sub-titles, (except as required by censor rulings) and will always exhibit such photoplays in the same order, arrangement, sequence and manner as was the positive print of each such photoplay when received from the Distributor;

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(g) That the Exhibitor, upon demand, will pay or reimburse the Distributor for any tax, fee or other like charge now and or hereafter imposed or based upon the delivery and or upon the exhibition of positive prints of the photoplays to be supplied hereunder and or upon the sums payable under this agreement by the Exhibitor to the Distributor (not including, however, any income or franchise taxes of the Distributor) as and when the same are payable or paid by the Distributor; and

(h) That the Exhibitor will give the name of the artist featured as "star" (if any) in each photoplay to be exhibited hereunder "chief prominence" (i.e., said name shall be in larger letters than any other part of the subject matter in which said name appears, except the name of the theatre and except upon theatre electric signs) and will otherwise conform to the contractual requirements of the producers relating to advertising with respect to each such photoplay in accordance with written instructions given by the Distributor, in all advertising and literature used in connection with the exhibition of each such photoplay, subject, however, to the aforesaid provision being interpreted and construed in conformity with the manner in which the Exhibitor has heretofore advertised the photoplays distributed by Distributor in the aforesaid theatres.

D. The Exhibitor and Distributor mutually agree that:

(1) In full payment for the license or licenses to exhibit each of the special feature photoplays to be supplied by the Distributor and exhibited by Exhibitor

hereunder in the theatres set forth in the aforesaid Schedule A, Exhibitor shall pay to Distributor:

a a. For the particular theatres named in Schedule "A" for which a flat sum or rental is therein specified, only the rental so specified in the Schedule.

a. For all other theatres the following:

(a) 1. As a minimum guarantee a sum equal to the number of points computed on the basis of thousandths of one per cent., multiplied by the cost of each photoplay to be delivered hereunder (said number of points set forth in Schedule A and marked opposite each theatre); said cost of each photoplay is to consist of and include the cost of producing or manufacturing said photoplay (which is referred to sometimes hereafter as negative cost), plus cost of positive prints used in the distribution of said photoplay in the United States and Canada, plus the cost of distributing said photoplay in the United States and Canada, up to the amount required in order that the owner of such photoplay may receive its negative cost plus the cost of positive prints, and the amount the Distributor is entitled to for its distribution charges upon the contracts with exhibitors totalling such amount.

(For example, if the negative cost of a given photoplay is $600,000.00 and the positive prints cost $30,000.00, and if the percentage of gross film rentals representing the cost of distribution for the

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

given period be 27½%, then the total of the negative cost and cost of prints of $630,000.00 shall represent 72½% of the total amount upon which the 27½% for distribution cost will be figured.) The minimum guarantee shall not be computed on a sum in excess of One million ($1,000,000) Dollars of the cost of any photoplay to be delivered hereunder except as to photoplays starring Douglas Fairbanks, as to which photoplays the minimum guarantee shall be computed on the actual cost of the photoplay; and in determining the actual cost, the producer (Douglas Fairbanks) shall follow the same practice as to negative cost as he has heretofore used.

(a) 2. In addition to such guarantees, the Exhibitor agrees to pay to the Distributor a sum equal to fifty per cent. (50%) of the net profits resulting from the exhibition of each picture in each theatre during the period of its exhibition.

(b) The cost of positive prints shall be, from August 1, 1927 to August 1st, 1928, as per Schedule B; and the cost of distribution shall be as per Schedule B from August 1st, 1927 to August 1st, 1928.

(c) Relative to the above items of cost of positive prints and cost of distribution, the cost of prints shall be the actual cost to the Producer, and the cost of distribution shall be the actual cost charged by the Distributor not exceeding twentyseven and one-half per cent. (27½%) of the gross film rentals

of each of such photoplays mentioned in this contract unless agreed to by the Exhibitor, or determined by the Committee hereinafter provided for, or by arbitration as hereinafter provided, and in no event shall the cost of distribution exceed thirty per cent (30%) of the gross film rentals of each such photoplay. The cost provided in Schedule "B" for both items shall continue as therein provided unless either party shall require a redetermination thereof by giving a notice to the other party at least ninety (90) days before the next July thirty first of any year of this agreement. If the Distributor and the Exhibitor fail to agree upon a change in the cost of distribution and or cost of positive prints, then the question shall be referred to the Committee hereinafter mentioned for determination, and in the event of the Committee failing to determine the same, then shall be referred to arbitration as hereinafter provided. The cost of prints and/or cost of distribution as so determined shall continue from year to year unless a redetermination is sought and had as above provided.

(d) Relative to the aforesaid number of points set forth in Schedule "A" and marked opposite each theatre, upon which the aforesaid minimum guarantee of the consideration to be paid by the Exhibitor to the Distributor for the use of each photoplay in said theatre is based, it is agreed that in the event there shall occur a substantial increase or decrease in the number of seats in theatres exhibiting photoplays in the particular locality in which

the theatre set forth in Schedule "A" is located and which is affected by such increase or decrease, then either the Exhibitor or the Distributor may serve written notice upon the other requiring a reconsideration and change in the number of points respecting the Exhibitor's theatre named in the schedule "A," such notice to be given in writing at least ninety days before July 31st next ensuing after said notice. If, following such notice, the Exhibitor and Distributor shall not have agreed in writing within thirty days from the date of said notice, upon a change in said points, then the question shall be promptly referred to the committee hereinafter provided for and the parties shall be heard by said committee upon the question. If the committee shall fail to agree within sixty days from the date of the notice, the question shall be referred to arbitration as hereinafter provided.

The decision of the committee or the arbitrators shall be binding upon the parties with respect to the photoplays to be exhibited hereunder, beginning July 31st next after the date of said notice, and shall continue unless thereafter changed under like conditions.

(e) The aforesaid guaranteed amounts covering the exhibition of each picture in each particular theatre shall be paid to the Distributor at its New York office or its nearest exchange to each theatre, at least seven days prior to the first day of the exhibition of such picture in such particular theatre; and the additional compensation or consideration as provided

in this contract shall be due and payable not later than 21 days following the end of the engagement of such picture in such theatre; excepting that if the engagement of any picture is for more than 7 days at any theatre, settlement for the additional compensation of such engagement shall be made on a seven-day basis within 21 days following the expiration of each 7-day period of such engagement:

(f) The Exhibitor agrees to provide promptly to Distributor statements relative to the receipts and expenditures incidental to each exhibition of each such photoplay in each such theatre, so as to expedite the payment of the monies that are due the Distributor and thus prevent any unnecessary delays in such payments. Should there be any delay caused for any reason whatsoever, the Exhibitor will pay on account such amounts as may be admittedly due, and the paying of same by the Exhibitor and the acceptance of same by the Distributor shall not be regarded as a waiver of their respective contentions or rights in the premises;

(g) NEGATIVE COST:

Negative cost, for the purpose of this contract, shall consist of all monies expended in the production of so-termed Negatives of each photoplay covered by this agreement, on the following items:

1. Cost of story;

2. The preparation of the scenario, continuity, script;

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

3. Editing, art titling;

4. Compensation or salaries paid to director, star and all actors, actresses and other employees engaged in the preparation and production and editing and assembling the aforesaid negatives, and sample positive copies of said photoplay;

5. All premiums for life (not including Executives), fire and theft insurance;

6. Exploitations and advertisement expenses paid by the producer;

7. All items other than items enumerated in subdivisions 1 to 6 inclusive, of this definition, customarily considered in the motion picture industry as properly chargeable against production cost, consisting only of those items directly attributable to such photoplay, including interest at the rate of 7% per annum from the date of each such expenditure to the general release date of such photoplay in the United States, or to a date four months from the completion of said photoplay, whichever is the earlier date.

8. Overhead expenses which have been customarily charged by the producer and in the manner charged for the last three photoplays produced by such producer. If such producer has not produced three photoplays, then in the manner that overhead expenses and disbursements are customarily charged

in the production of the type of motion picture covered by this agreement.

9. If any salary or compensation payable under clause 4 of this subdivision (g) be in whole or in part based upon a percentage of profits, or of receipts, then there shall be included as a part of negative cost, for the purposes of this contract, in lieu of the percentage portion of such salary or compensation, a fixed sum as reasonable compensation for the services which shall be either agreed upon in writing between the Distributor and the Exhibitor and the Producer of such photoplay, or if they fail so to agree, then fixed by the committee hereinafter provided for, or if the committee fail to fix the same, then fixed by arbitration, as hereinafter provided. The Producer of such photoplay shall have the right to be heard by said committee or said arbitrators upon the question to be determined.

10. A reasonably itemized statement showing the aforesaid negative cost shall be provided by the Distributor to the Exhibitor on or before the release date and within four months of the completion of the negative, of each photoplay included in this agreement, and the Exhibitor shall have the same opportunity to examine the accounts of the Producer relative to the negative cost as is in this contract provided for the Distributor to examine into the operating cost of the theatre in which the photoplay is to be exhibited.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

Any corrections to be made in the negative cost of any photoplay shall be made within six months from the release date of such photoplay, and any adjustments incident to such corrections, shall be promptly made and paid by either the Distributor on behalf of the Producer, or the Exhibitor.

Should there be any dispute relative to these items, same shall be referred to and determined by the Committee of Four, hereinafter provided, and upon their failure so to do, shall be referred to arbitration as hereinafter provided.

(2) In determining the net profits, of which the Exhibitor agrees to pay Distributor 50% as aforesaid, it is agreed that the exhibitor may deduct the following expenditures from gross receipts:

(a) All usual costs of theatre operation, hereinafter sometimes referred to as "operating cost," including particularly but without limitation of the foregoing general language the respective amounts paid for each such picture for each such theatre referred to as guaranteed amount paid to the Distributor, expenditures for labor, services, heat, light, power and other usual items of expense including ordinary repairs and replacements, all charged to the week for which such costs were incurred or equitably apportioned thereto;

(b) All royalties and all taxes, fees and other like charges of a similar nature, (including the fees, taxes or other charges which may be payable to the Distributor under the provisions of paragraph [g] of Clause C of

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

Article V,) equitably apportioned over the period to which they apply or during which they accrued;

(c) All advertising expenses in connection with the exhibition of the particular photoplay charged to the particular week or period for which incurred or apportioned over the run of the photoplay, if incurred with respect to more than a particular week;

(d) All special expenses in connection with the presentation of each particular photoplay, (that is, prologues, ballet, special settings and other similar special expenses,) and or all expenses which may be incurred or for which the Exhibitor may become liable in respect to any and all parts or portions of the entire program presented in each such theatre all apportioned to the particular week for which the same were incurred or if incurred for more than a particular week, equitably apportioned over the run of the particular photoplay;

(e) A proportionate allowance for each theatre in which the photoplays of the Distributor are exhibited pursuant to this agreement, for actual district and home office overhead, it being understood and agreed that the method in use by the Exhibitor from time to time in apportioning its home office and district overhead to the respective theatres on its circuit, which method is used by the Exhibitor for all accounting and other purposes in its business shall be the method on which such overhead is apportioned to the theatres for the purpose of computing film rental hereunder;

(f) In the case of theatres owned in fee by the Exhibitor, taxes on the theatre property, insurance,

interest on the mortgages, amortization of bond discount and expense, maintenance charges, depreciation on building and equipment, at the rates applicable to the particular properties according to their class and character (and which shall be the same rates which the Exhibitor applies for all accounting and other purposes of its business), and an allowance for a return equal to seven (7%) per centum per annum on the residual amount of the actual investment of the Exhibitor in the land, theatre building and equipment, said residual amount to be that remaining after depreciation, as above provided, all equitably apportioned for the period for which operating costs are to be determined;

(g) In the case of theatres leased by the Exhibitor, rent, and taxes, interest, insurance and other charges payable by the Exhibitor under the lease; other taxes, insurance and maintenance charges, interest at the rate of seven (7%) per centum per annum on the amount of any lease security deposits made by the Exhibitor, less the amount of any interest allowed by the depository on such deposits; an equitable amortization of any amounts invested by the Exhibitor in improvements, including building and/or equipment, and in any bonus or other lease cost, interest on any mortgages and amortization of bond discount and expenses; and an allowance for a return equal to seven (7%) per centum per annum on the net actual unamortized investment of the Exhibitor in the said lease, improvements, building and/or equipment; all equitably apportioned for the period for which operating costs are being determined;

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(h) In the case of theatres operated by the Exhibitor under management contracts, the terms specified in sub-paragraphs (f) and (g) above, according as the proprietor is the owner of the theatre in fee or is the lessee thereof, shall apply in determining such costs and no sums or percentages payable under such management contracts to the theatre proprietor, (except bona fide salaries,) or the Exhibitor, (except bona fide overhead and/or service charge or allowance,) shall be included in such operating costs; provided, however, that where the Exhibitor shall receive for its services as manager under such contracts a percentage of profits there shall be allowed as an expense in lieu thereof a fair and reasonable management charge which shall either be mutually agreed upon or fixed by the aforesaid committee or by arbitration;

As to theatres operated by Exhibitor under management contracts, the Exhibitor may, in lieu of applying the provisions of sub-paragraphs (f) and (g) above, agree with the Distributor, with the approval of the proprietor of the theatre concerned, upon a rent for said theatre to be used in determining the cost of operation, and if the Distributor and Exhibitor and the proprietor of the theatre fail to agree upon such rent, then a fair and reasonable rent shall be fixed and determined by the said committee hereinafter provided for, or upon their failing to determine the same, by arbitration, as hereinafter provided for, and the proprietor shall have the right to be heard upon the question by the committee or the arbitrators.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

In case of a theatre operated by the Exhibitor under an arrangement by which the rent payable by the Exhibitor is measured, in whole, or in part, upon a percentage of the profits of the theatre, the portion of the rent so measured by profits shall for the purpose of this contract be set by mutual agreement between the Distributor and the Exhibitor and the proprietor of the theatre at a fixed sum in lieu of such percentage portion, and such sum shall be considered as part of the cost of theatre operation.

If Distributor and Exhibitor and the proprietor of such theatre fail to agree upon such sum, the same shall be fixed and determined by the said committee, and upon their failure to fix the sum, by arbitration, as hereinafter provided for, and the theatre proprietor shall have the right to be heard on the question by the committee or the arbitrators.

(i) In case the property on or in which any theatre of the Exhibitor is located includes any premises not devoted to theatre purposes, then the items specified in sub-paragraphs (a), (e), (f), (g) and (h) of this paragraph 2 shall also be equitably apportioned as between the theatre and non-theatre portions of the property; provided, however, that where the commercial property is relatively small in amount or in importance in relation to the theatre, such apportionment shall not be made, but in that case the entire sub-rentals and other income in respect to such commercial property shall be used to reduce the cost of operation of the entire theatre and commercial property;

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(j) There shall also be included in operating costs, all other legitimate and proper items of expense of the Exhibitor in connection with the maintenance and operation of the said theatres and the carrying on of the Exhibitor's business in respect thereto, equitably apportioned over the period included in the run of the respective photoplays exhibited hereunder.

(3) It is understood and agreed that, for the purpose of computing the expenses provided for in sub-paragraphs (a), (f) and (g) of clause 2 of D of any of the theatres set forth in Schedule "A," in which Paramount Famous Lasky Corporation has a proprietary interest, direct or indirect, the investment of Paramount Famous Lasky Corporation in such theatres and/or in the corporation or corporations, (whether wholly or partly owned by Paramount Famous Lasky Corporation and whether the interest be direct or indirect, and whether through subsidiaries or sub-subsidiaries either wholly or partly owned,) shall be reflected and translated to such theatres and used in the calculation of said expenses.

For the purpose of computing net profits payable as part of film rental under this agreement, depreciation, amortization, return on investment and items of similar character shall be figured on the basis on which they appear at the end of a given fiscal quarterly period of the Exhibitor and shall be constant during the immediately succeeding quarterly period regardless of any actual change that may take place during any quarterly period. Such expenses shall be re-stated for the succeeding quarter on the basis of the

facts existing at the close of the immediately preceding quarter.

If at the end of any run of any particular photoplay, it is necessary to reapportion any of the items of operating cost by reason of the lengthening or shortening of the estimated period or otherwise, if there shall have been used in determining film rental for a particular week or period an apportionment based upon an estimated run or other conditions differing from the actual run or actual conditions, then such reapportionment shall be made and the Distributor and Exhibitor shall adjust the amount between them on the basis of such reapportionment; provided, however, that the provisions of this paragraph shall not affect the provisions of the immediately preceding paragraph relating to the use of a state of facts at the close of the preceding quarter in determining depreciation, amortization, return on investment and similar items as aforesaid.

For the purpose of simplifying procedure, it is understood and agreed that authorized representatives of the Distributor and the Exhibitor shall quarterly, at the beginning of each quarter agree upon the amount of the expenses for each theatre respectively relating to the investment, depreciation, amortization, return on investment and other similar items which are to be constant during the next fiscal quarter, and the amounts so agreed upon shall be used in the calculation of film rental hereunder during the succeeding quarterly period. In the event of failure so to agree as to any one or more theatres, they shall submit the questions in dispute to the Committee hereafter mentioned and upon its failure to determine it, then to arbitration as herein

provided for the arbitration of other matters, and the amounts of such expenses for the respective theatres fixed as aforesaid shall be used in the calculation of film rental for such succeeding quarter.

Any dispute or controversy that may arise as to the amount or apportionment of any of the items of operating cost or as to inclusion of any items not expressly provided for in the foregoing paragraph of this Article, shall be settled by the Committee hereafter mentioned, and upon its failure so to do, then by arbitration in the manner hereinafter set forth.

4. In all cases, the Exhibitor shall furnish to the Distributor daily, at the Exchange of the Distributor from which the particular theatre is served, a correct itemized statement of the gross receipts of each theatre for admissions thereto during the period of exhibition therein of each photoplay supplied by the Distributor hereunder, and the Distributor shall have access (to such extent and in such manner as shall reasonably be required for the determination of the items covered by such gross receipts, and in such manner as shall not be inconsistent or interfere with the continuance of the orderly operation and carrying on of the business of the Exhibitor), during the period of exhibition of such photoplay, and at any and all reasonable times after the receipt by the Distributor of the final box office statements for each such theatre, for the purpose of inspection, to the box office and to all books and records relating to the Exhibitor's box office receipts at such theatre during the exhibition of each such photoplay. The Exhibitor shall also furnish to the Distributor at the time of each

payment to be made by the Exhibitor pursuant to this contract, a true statement, in duplicate, of the gross receipts, and of the operating cost of each theatre during the period for which such payment is made, certified by an official of the Exhibitor, said operating cost to be reasonably itemized, and at the request of the Distributor, will also furnish said Distributor with other relevant information regarding all books of accounts, records, contracts and other documents and memoranda of the Exhibitor pertaining to such engagement of such photoplay, but the Exhibitor shall not be required to make up and furnish copies thereof. The Distributor, however, shall have the right of inspection of such documents at the office of the Exhibitor, or at the particular theatre or office thereof, wherever the same may be located.

5. The Exhibitor agrees to expend in advertising for each of the photoplays to be exhibited hereunder at each of the aforesaid theatres, not less than the amount customarily and usually expended by the Exhibitor in advertising photoplays of the same character in such theatres.

The Distributor agrees to expend or cause to be expended by the Producer out of the amount, if any, included in negative cost for advertising and exploitation, a fair and reasonable proportion of said amount in the particular theatrical centers of the territory included in Schedule "A," and the Distributor will consult with the Exhibitor prior to the allocating and expending of such amount.

6. This agreement shall not be assigned by either party without the written acceptance by the assignee of all of

the terms hereof, and the written consent of the other party first had and obtained; provided, however, that the Distributor may assign its interest under this agreement to a corporation in which the Distributor shall own fifty-one per cent. (51%) or more of the voting capital stock thereof and which is engaged in the business of distributing photoplays, or to any corporation all, or substantially all of the stock of which, shall be owned by the Distributor and of such assignee Joseph M. Schenck shall be the Chief Executive officer; and provided also that the Exhibitor may assign its interest under this contract to Paramount Famous Lasky Corporation, a New York corporation, or to any corporation, all or substantially all, of the capital stock of which shall be owned by either Paramount Famous Lasky Corporation or the Exhibitor and of such assignee Adolph Zukor or Sam Katz shall be the Chief Executive officer; and provided always that such assignment, with or without the consent of the other party, shall not release or relieve the assignor from its obligations and liabilities under this contract. The provisions of subdivision (d) of Article I shall apply to such assignee corporations. If, however, any theatre or theatres shall be sold, assigned, or leased, whether by sale and transfer of assets, or by sale and transfer of stock, to a person or corporation in or with which the Exhibitor and or Paramount Famous Lasky Corporation has no proprietary interest of any sort direct or indirect, but such sale or transfer shall be in good faith, then such particular theatre shall, from the date such sale or transfer takes effect, cease to be covered by this contract, and the Exhibitor shall promptly serve notice upon the Distributor of any such sale or transfer.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

7. In case the Exhibitor shall be delayed in, or prevented from, the performance of this agreement at any or all of the theatres set forth in Schedule "A" with respect to any of the photoplays to be supplied hereunder, by reason of censor rulings, the elements, accidents, strikes, fires, insurrections, acts of God, the public enemy, public calamity or order of any court of competent jurisdiction or by reason of other causes beyond the control of the Exhibitor, whether of the same or of any other nature, then such delay or failure of performance with respect to such photoplay at any or all of such theatres shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Distributor. In any such event, the time of the Exhibitor to perform this agreement with respect to any such photoplay, shall be extended for a period equal to the time of such delay unless performance thereof because of the happening of any such cause or contingency is excused or rendered impossible, in which case performance by the Exhibitor with respect to any such photoplay shall be waived. The resumption of performance by the Exhibitor shall begin promptly after the removal or abatement of the contingencies or causes of disability or prevention of performance, provided that if any such delay or prevention of performance caused as aforesaid shall continue for a period extending beyond the expiration of the original exhibition dates for any such photoplay, the exhibition hereunder of which shall have been delayed or prevented, either party hereto may cancel this agreement, but only with respect to such photoplay and only with respect to the par-

ticular theatre or theatres affected, by sending, within one (1) week after the expiration of said original exhibition dates, notice in writing to the other party to such effect; and provided also, that if such delay shall prevent the commencement of exhibition of any particular photoplay within the respective days applicable to such theatre as in Schedule A and in this agreement provided, from the date of availability thereof, the Distributor shall have the option to cancel such particular photoplay from this contract with respect to the particular theatre or theatres involved, by giving the Exhibitor written notice of its exercise of such option.

8. In case the Distributor shall be delayed or prevented from the performance of this agreement with respect to any of the photoplays to be delivered by it hereunder, by reason of the elements, accidents, strikes, fires, insurrections, acts of God, the public enemy, public calamity, court orders, censor rulings, delays of any common carriers, delays in production, or failure of the producers of any such photoplays to make or deliver to the Distributor, or of any stars or other important performers to appear therein in time for deliveries as herein provided, or by reason of any other cause beyond the control of the Distributor, whether of the same or of any other nature, then such delay in, or prevention of, performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor. In any such event, the time of the Distributor to perform this agreement with respect to any such photoplay shall be extended for a period equal to the time of such delay, (but

not beyond the life of this agreement,) unless performance because of the happening of any such cause or contingency is excused or rendered impossible, in which case the performance by the Distributor with respect to any such photoplay shall be waived. The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance and the Distributor shall deliver to the Exhibitor any such photoplay at the earliest available date therefor, first giving notice as hereinbefore in this contract provided of the date of availability and such delivery in any such case shall be with the same force and effect as though delivery took place within the period hereinabove limited and the Exhibitor agrees to accept, pay for and exhibit any such photoplay at any such period, pursuant to the terms hereof.

9. Waiver by either party of any breach or default by the other shall not be construed as a continuing waiver or as a waiver of any other or subsequent breach or default by each such party.

10. The Distributor and Exhibitor agree that, except as provided in clause 11 of this article, they will respectively refer to the committee hereinafter provided all questions, disputes and controversies arising out of or under this agreement. Such committee shall consist of Nicholas Schenck, Joseph M. Schenck, selected by the Distributor and Sam Katz and Sidney R. Kent, selected by the Exhibitor, or their respective successors as hereinafter provided for; and such entire committee shall pass upon any ques-

tion submitted to it, and a vote of three out of four of said entire committee shall constitute decision of the committee. The Distributor and Exhibitor also agree that if said committee shall not act or shall fail to render a decision as aforesaid within the time hereinbefore specifically provided, or if no period of time be specifically provided, then within thirty days of said submission, unless the exigency of the question for decision require same to be decided in less than thirty days, to submit the question, dispute or controversy to arbitration as hereinafter provided, and such question, dispute or controversy shall be settled and finally determined in the following manner:

In the event any such question referrable to arbitration under the terms of this contract arises, the Exhibitor or the Distributor on its own behalf, shall appoint an arbitrator, and give notice in writing of such appointment to the other party; and the other party shall thereupon and within seven (7) days thereafter appoint an arbitrator on its behalf, and the two arbitrators so named shall, within seven (7) days after the appointment of the later appointed of the two, agree upon and appoint a third arbitrator. If one of the parties, after notice of appointment of an arbitrator by the other, shall fail, within the aforesaid seven (7) days, to appoint an arbitrator on its own behalf, then the party first appointing an arbitrator may, upon written notice to the other of the time and place of such application, apply to any judge of the Court of Appeals of the State of New York, (and if such judge shall fail or refuse to appoint, then to the then President of the Arbitration Society of America,) to appoint an arbitrator for such party. If the two arbitrators so appointed by or for the parties hereto,

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

shall fail, within seven (7) days after the appointment of the later appointed thereof, to agree upon a third arbitrator, then either of the parties hereto, upon written notice to the other of the time and place of such application, may apply to any judge of the Court of Appeals of the State of New York, (and upon his failure or refusal to appoint, then to the then President of the Arbitration Society of America,) to appoint a third arbitrator. If the foregoing means of appointment of arbitrators should fail, then the parties, or either of them, upon notice to the other, may proceed to have arbitrators appointed in the manner then provided by the Laws of the State of New York. In lieu of the provisions for appointment of a third arbitrator, the Distributor and the Exhibitor may agree, in writing, upon the third arbitrator. The third arbitrator and any arbitrator appointed for a party upon its default in making the appointment for itself, shall in every instance be impartial and disinterested in the subject matter and in the parties hereto, and disinterested in any of the producers and or artists whose photoplays are the subject of this contract and or any business thereof. The parties, promptly following the appointment of the Board of Arbitrators shall proceed to present the matter or matters in dispute or controversy to such Board, which shall proceed with all reasonable dispatch to hear the parties and consider the same, and the arbitrators may require the Distributor and the Exhibitor to produce such papers and accounts as in the opinion of the arbitration board may be necessary. The Exhibitor and the Distributor shall each pay the expenses and charges of the arbitrator appointed by or for such party, and the other

necessary expenses and costs of any arbitration hereunder shall be borne equally by the Distributor and the Exhibitor.

The decision of a majority of the three (3) arbitrators so appointed shall be binding and conclusive upon the Distributor and the Exhibitor.

The provisions of this agreement, including specifically the provisions relating to arbitration, shall be construed according to the Law of the State of New York.

11. It is understood and agreed that except as herein specifically provided otherwise, all accounts and accountings between the Distribtuor and the Exhibitor shall be settled annually and that any and all claims, disputes or controversies arising between the Exhibitor and the Distributor with respect to any act, acts, omission or omissions, or state of facts occurring during any given period of fifty-two (52) consecutive weeks, (such periods being computed from July 31, 1927,) shall be submitted to arbitration as hereinabove provided, within one (1) year from the expiration of such particular period and no cause of action shall arise upon or in respect to the same unless such matter shall have been so submitted to arbitration within said year or, in the event of a failure of such arbitration, unless suit thereon shall have been commenced within a period of one (1) year and six months from the expiration of such particular period, and failure so to submit to arbitration or to commence suit as aforesaid, within said respective periods of one year and one year and six months, shall be a complete defense to any action or actions thereon.

It is understood and agreed that the Distributor and the Exhibitor shall, respectively, have the right to compel per-

formance of and/or to prevent the breach, or continued, threatened or attempted breach of any of the provisions of Article II, Article III and the following subdivisions of Article V, to wit: (a), (b) and (c) of Clause A, and (a), (b), (c) of Clause B, and (a), (b), (e), (f), (h) of Clause C, and subdivision 4 (except as hereinafter provided) of Clause D of this agreement, in cases where a court of competent jurisdiction will afford equitable relief therefor and in such cases it shall not be necessary for the parties hereto first to submit the dispute or controversy arising out of, or relating to, said particular paragraphs and Articles to arbitration. Provided, always, however, that any dispute or controversy as to the correctness of any statement rendered under the provisions of subdivision 4 of Clause D of Article V, shall be submitted to and determined by arbitration as herein provided; and provided always, that any action, suit or proceeding at law or in equity shall be commenced within the period of one (1) year and six (6) months after the expiration of the annual period in which, or with respect to which, the cause of action accrued and that failure to commence such action, suit or proceeding within such period of time shall be a complete defense to any action or actions thereon.

12. The Distributor warrants that none of the motion pictures licensed and to be licensed under this agreement will be reissues from old negatives or old negatives renamed.

13. (a) It is agreed that if the Exhibitor fail for any reason whatsoever to exhibit any of the photoplays in any one of the theatres included in this agreement in accord-

ance with the conditions and provisions of this agreement (unless such failure be excused as herein provided for), Exhibitor agrees to pay to Distributor not later than 50 days from the date of availability specified by Distributor in such notice of availability as to the theatre of exhibitor's circuit listed in schedule A where the time of the exhibition of such picture is for seven or more days, and not more than 95 days from the date of availability specified by the Distributor in such notice of availability of such photoplay as to all such other theatres, as liquidated damages for the failure of the Exhibitor to exhibit such photoplay in such theatre a sum equal to the guaranteed amount set forth in subdivision 1 of paragraph of article V of this agreement, applicable to such theatre.

(b) Nothing herein contained, however, shall be construed to take away any right which the Exhibitor has to require the Distributor to furnish and make available such photoplay, and which the Distributor has to require Exhibitor to exhibit same.

14. Nothing in this agreement shall be deemed to constitute the Exhibitor and the Distributor nor the Exhibitor and any of the artists or producers whose motion pictures are to be furnished to the Exhibitor herein partners or joint adventurers, or to create or impose any partnership or joint adventureship relation or liability and the relationship between the parties hereto shall be deemed to be that of independent contractors.

15. If any of the specifically named members of the committee of four (4) referred to in this agreement as

consisting of Joseph M. Schenck and Nicholas Schenck, representing the Distributor, and Sam Katz and Sidney R. Kent, representing the Exhibitor, shall cease to be actively associated with the party to this contract which such individuals represent, then the party represented by such individual may substitute for him or them, as the case may be, another representative or representatives, such change to be effected by written notice to the other party setting forth the change. Said respective parties may also fill a vacancy in said committee caused by the absence or incapacity or inability of said individuals to act, or by said individuals personally withdrawing from the committee.

16. The Exhibitor and Distributor agree that this agreement is subject to such prior rights as the United Artists Theatre Circuit, Inc., a Maryland corporation, has to the exhibition of the motion pictures distributed by United Artists Corporation pursuant to its agreement dated June 22, 1926, with United Artists Corporation, a copy of said agreement having been provided the Exhibitor by the Distributor, and the Distributor agrees that it will not extend the rights of the United Artists Theatre Circuit, Inc., to more than the "first twenty theatres" constructed or acquired by the United Artists Theatre Circuit, Inc., and after the twenty theatres have been so constructed or acquired, to any theatre or theatres constructed or acquired by United Artists Theatre Circuit, Inc., in replacement or substitution for one or more of the first twenty theatres (or in replacement or substitution for one or more substituted theatres) which shall have gone out of the United Artists Theatre Circuit, Inc.'s, circuit prior thereto, provid-

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

ing such extension shall interfere with the right of the Exhibitor to exhibit for "first run" the so-termed United Artists' pictures or photoplays in any of the theatres of the Exhibitor set forth in Schedule "A"; and the Distributor does hereby set forth in Schedule "C" the list of the so-termed United Artists Theatre Circuit's theatres as of this date which are included in the aforesaid contract between United Artists Corporation and United Artists Theatre Circuit, Inc.

17. It is agreed by the parties hereto that all schedules referred to in the aforesaid agreement shall be considered as a part of this agreement with the same full force and effect as if the contents of each respective schedule were recited herein.

18. It is agreed by the parties hereto that in the event of the Exhibitor deeming any of the photoplays other than the photoplays in which appear any of the aforesaid stars mentioned in this agreement to be unsatisfactory for exhibition in any of the theatres set forth in Schedule "A," then the Exhibitor shall make known his decision to that effect to the Distributor, and in the event of Sam Katz, hereby designated as the representative of the Exhibitor and Al Lichtman, hereby designated as the representative of Distributor, being unable to agree whether or not such picture be unsatisfactory for exhibition in the particular theatres of Schedule "A" named by the Exhibitor, then it will be referred for determination and settlement to Nicholas Schenck of New York City, and his decision shall be final and binding upon the parties hereto relative to such motion picture.

The Distributor may name a substitute to act for Mr. Al Lichtman, or a successor therefor, and the Exhibitor

shall name a substitute to act for Mr. Sam Katz, or a successor therefor, and in the event Mr. Nicholas M. Schenck shall be unable or shall fail or refuse to act in the premises, then and in that event the representative of the Distributor and Producer shall select a person in the place and stead of Mr. Nicholas M. Schenck, and failing so to do, either party may request Will H. Hays, or such other person as agreed upon by the parties, to appoint a referee, and the referee so appointed shall render decision which shall be final and binding upon the parties hereto.

Upon such decision being in favor of the Exhibitor, then the Exhibitor may substitute for such theatre the so-termed Class B theatre of the Exhibitor's circuit in the same locality as the theatre in question, and the photoplay shall be exhibited in such theatre, subject to the provisions of this agreement, with the same effect as if said theatre were named in Schedule "A."

19. This agreement is binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

(SEAL)

UNITED ARTISTS CORPORATION,

By Joseph M. Schenck (signed)
Pres.

PUBLIX THEATRES CORPORATION,

By Sam Katz (signed)

(SEAL)

SCHEDULE A.

PUBLIX THEATRES AND GUARANTY BASIS OF ONE THOUSANDTHS OF ONE PER CENT. REFERRED TO IN CLAUSE D OF ARTICLE V OF CONTRACT, DATED FEBRUARY 3, 1928.

City	Theatre	Number of Days	Rate in Thousandths
CHICAGO	Pantheon	2	
"	Knickerbocker	2	
"	Pershing	2	
"	Vitagraph	2	
"	Biograph	2	
"	Windsor	2	
"	Dearborn	1	
"	Oak-Park	2	
"	State	2	
"	West End or		
	Madison	3	
"	Crawford	2	
"	Wilson	2	
"	Michigan	2	
"	Belpark	2	
"	Elantoe	2	
"	Covent Garden	3	

It is optional with Exhibitor to play any photoplay at the Covent Garden or to omit exhibition there. Whether or not exhibited there, the guarantee for the abovenamed group is not to be increased or decreased.

The Exhibitor pays as minimum guaranty for each picture at all of the abovenamed fifteen houses (sixteen including Covent Garden) the total guaranty of 375 points allocated as the Exhibitor chooses among the houses and in addition to the guaranty pays a sum equal to fifty per cent. (50%) of the combined operating profits of all of the above houses from the playing of the picture, determined by subtracting from the gross receipts of all of the houses the operating expenses of all of the houses as provided in the contract. If any one or more of the said houses be removed from the operation of the contract as provided therein, the total points for the remaining houses thereof will be subject to equitable adjustment between Exhibitor and Distributor, and failing same to be adjusted by the Committee, and failing that by arbitration.

(Schedule A, Cont.)

City	Theatre	Number of Days	Rate in Thousandths
CHICAGO	~~Forest Park~~	~~2~~	~~12~~
"	Manor	2	22
"	Tiffin	2	36
"	~~New Terminal~~	~~2~~	~~30~~
"	~~Commercial~~	~~3-2~~	~~22~~
"	~~Portage Park~~	~~2~~	~~20~~
"	~~Midwest~~	~~2~~	~~30~~
"	~~Crown~~	~~3-2~~	~~37~~
"	Crystal	3-2	35
"	Alamo	2	22
"	Iris	2	18
"	~~Marquette~~	~~3-2~~	~~15~~
"	~~Highway~~	~~3-2~~	~~15~~
~~ANTIOCH, ILL.~~	~~Antioch~~	~~3-2~~	~~7~~
BLOOMINGTON, ILL.	Irwin	6-3	~~45~~ 36
DECATUR, ILL.	Lincoln Sq.	7-4	~~50~~ 40
ELGIN, ILL.	(Crocker) or) Rialto)	6-4	~~44~~ 29
~~FREEPORT, ILL.~~	~~Linda~~	~~4-3~~	~~25~~
JOLIET, ILL.	(Princess) or) Rialto*)	6-4	75
~~LA CROSSE, WIS.~~	~~Rivoli~~	~~3-2~~	~~30~~
PEORIA, ILL.	Madison	7-4	~~100~~ 91
ROCKFORD, ILL.	Orpheum	7-4	88**
~~SPRINGFIELD, ILL.~~	~~Majestic~~	~~7~~	~~112~~**
QUINCY, ILL.	Orpheum	6-4	~~44~~ 33
~~STERLING, ILL.~~	~~Lincoln~~	~~4-2~~	~~12~~
LA SALLE, ILL.	Majestic	3	~~35~~ 24

*The Exhibitor may exhibit any photoplay at either the Princess or Rialto Theatre at Joliet, Illinois. If exhibited at the Rialto, the film rental is to be a flat rental of the minimum guaranty without any additional rental by way of operating profit.

** As to Rockford, Springfield and Waukegan, Illinois, in any one or more of such places, the Exhibitor has the right to terminate this agreement effective July 31, 1928.

* Reduced by Mutual Agreement Between JJ Rubens + United Artists

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(Schedule A, Cont.)

City	Theatre	Number of Days	Rate in Thousandths
~~WILMETTE, ILL.~~	~~Dellinger~~	~~2-2~~	~~15~~ Elmer Rialto Suit
WAUKEGAN, ILL.	Academy	5-4	60**
AURORA, ILL.	Fox Rialto	6-4	~~60~~ 54 "
STREATOR, ILL.	Plumb	3	~~20~~ 18 "
KANKAKEE, ILL.	Majestic	3	~~20~~ 24 "
MAYWOOD, ILL.	Lido		25
SPRING VALLEY, ILL.	Valley	2	~~5~~ 3 "
~~SAVANNAH, ILL.~~	~~Wolds~~		~~10~~ Elmer Rialto Suit
LAKELAND, FLA.	Palace	2-1	12
FT. LAUDERDALE, FLA.	Sunset	2-1	7
~~GRETA, Fla.~~	~~Aladdin~~	~~2-1~~	~~9~~ Elmer Rialto Suit
NEW SMYRNA, FLA.	Victoria	1	2
SANFORD	Milane	2-1	6
GAINESVILLE	Lyric	2-1	10
PALATKA	Howell	2-1	8
DAYTONA BEACH	Florida	3-2	23*
DAYTONA	Vivian	1	6*
TAMPA	Tampa	4	115
MIAMI	Olympia	4	100
MIAMI BEACH	Community	2-1	13
PALM BEACH	Beaux Arts or Paramount	3-2	22*
W. PALM BEACH	Stanley	3-2	23*
ST. PETERSBURG	Florida	3-2	28
LAKE WORTH	Oakley	2-1	5
WINTER HAVEN)	Williamson)	2-1	7**
AVON PARK)	Avalon)	2-1	

*The theatres at (Daytona Beach and) Palm Beach are not open all year round. A picture will be played first run (either at Daytona or Daytona Beach, and first run either at Palm Beach or West Palm Beach, and the points set opposite the said towns and theatres refer to such first run. } Elmer Thompson Rialto Suit

**At Winter Haven and Avon Park, a picture will play at both places for the same guaranty of seven (7) points both places, not each place.

+ Put in the letter Feb. 6th 38 - Thompson of W. A. to Palmer

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

44

(*Schedule A, Cont.*)

City	Theatre	Number of Days	Rate in Thousandths
JACKSONVILLE	Florida	7-4	85
OCALA	Temple	2-1	5
"ATLANTA, GA.	Howard	6	220
"FORT SMITH, ARK.	New	4-3	28
WACO, TEX.	Hippodrome	4-3	50
"GALVESTON, TEX.	Queen	5-4	74
OKLAHOMA CITY, OKLA.	Criterion	7	150
"SUMTER, S. C.	Rex	2-1	8
"GREENVILLE, S. C.	Carolina	3-2	14
"COLUMBIA, S. C. "	Imperial	4-3	20
"CHARLOTTE, N. C.	Imperial or Carolina	6-3	55
"SPARTANSBURG	Rex	3-2	20
"ANDERSON "	Strand	3-2	6
"JOHNSON CITY, TENN.	Majestic	3-2	14
"JACKSON	Lyric	3	11
"ASHEVILLE, N. C.	Imperial	6-3	55
"AUGUSTA, GA.	Imperial	6-3	39
"COLUMBUS	Grand	3	18
"MACON	Capitol	6-3	40
"SAVANNAH	Lucas or Odeon	3	56
"ANNISTON, ALA.	Noble	3-2	10
"BIRMINGHAM "	Strand	7	169
"MONTGOMERY "	Empire	7-4	55
"CHATTANOOGA, TENN.	Tivoli	6-3	92
"KNOXVILLE, TENN.	Riviera or New	6-3	70
CHICKASHA, OKLA.	Rialto	4-3	12
ENID, "	Criterion	4-3	16
MCALESTER, "	Palace	3-2	9

(*Schedule A, Cont.*)

City	Theatre	Number of Days	Rate in Thousandths	
HOUSTON, TEX.	Metropolitan	7		
	or		231	
	Kirby	14		
SAN ANTONIO, TEX.		7	231	
FT. WORTH "		7-4	125	
DALLAS "		7	313	
AUSTIN "		6-3	60	
WATERLOO, IOWA	Riviera	4-3	40	
COUNCIL BLUFFS, IOWA	Broadway	4-3	30	
DAVENPORT, IOWA	Columbia or Garden	7-4	60	
ROCK ISLAND, ILL.	Ft. Armstrong	7-4	50	
MOLINE, "	LeClaire	4-3	20	
SIOUX CITY, IOWA	Princess	7-4	63	
NEWTON, "	Rialto	3-2	9	
ST. JOSEPH, MO.	Missouri	7-4	60	as per Actual Sales Thru.
DES MOINES, IOWA	Capitol or			
	Des Moines	7	190	
OMAHA, NEBR.	Riviera or Rialto	7	~~250~~ 175	By Mutual Agreement
LINCOLN, NEBR.	Lincoln	7	75	
PUEBLO, COLO.	Colorado	4-3	30	
COLORADO SPRINGS, COLO.	Rialto	6-3	115	in July and August
			24	in other months
GREELEY, COLO.	Sterling	3-2	26	
DENVER, COLO.	Rialto	2 weeks	375	Two weeks
	or			
	Denver	7	250	
NEW HAVEN, CONN.	Olympia	7	254	
BUFFALO, N. Y.	Buffalo	7	500	
YONKERS, N. Y.	Strand	7	150	
POUGHKEEPSIE, N. Y.	Stratford	6-3	65	
CEDAR RAPIDS	Paramount	4-3	75	Included as per agreement between Publix & Saul 9/27/25

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(*Schedule A, Cont.*)

City	Theatre	Number of Days	Rate in Thousandths
NEWBURGH, N. Y.	Broadway	6-3	50
SAN FRANCISCO, CALIF.	Granada or Warfield or California or St. Francis	7	600
		14 days or longer	600.
BANGOR, MAINE	Opera House	4-3	33
BATH	Opera House	2-1	4
BELFAST	Colonial	2-1	4
BIDDEFORD	Central	3-2	15
ALLSTON, MASS.	Capitol	6	53
BARRE, VT.	Park	3-2	12
BROCKTON, MASS.	Brockton or Rialto	4) 7)	484
CAMBRIDGE	Central Square	4-3	50
CHELSEA	Broadway	4-3	30
DORCHESTER	Fields Corner and Codman Square (day and date)	4-3	65***
DOVER, N. H.	Strand	3-2	10
FT. FAIRFIELD, MAINE	Park	1	2
FORT KENT	Savoy	1	2
GLOUCESTER, MASS.	North Shore	4-3	25
HAVERHILL, MASS.	Colonial	7-4	62
HOULTON, MAINE	Temple	2-1	4
LOWELL, MASS.	Merrimac Sq.	7-4	80

***Fields Corner and Codman Square play day and date with minimum guaranty of sixty-five (65) points for both theatres not each theatre

(Schedule A, Cont.)

City	Theatre	Number of Days	Rate in Thousandths
LYNN, MASS.	Olympia	7-4	125
~~MALDEN,~~ "	~~Strand~~	~~6-3~~	~~75~~
NEW BEDFORD, MASS.	Empire	7-5	125
NEWPORT, R. I.	Strand	4	45
NORTH CAMBRIDGE, MASS.	Harvard	3-2	15
PAWTUCKET, R. I.	Strand	6-3	105
PITTSFIELD, MASS.	Imperial or Capitol	6 4-3	53
ROCKLAND, MAINE	Empire	3-2	9
RUTLAND, VT.	Strand	3-2	16
SALEM, MASS.	Salem	7-4	65
WATERVILLE, MAINE	Haines	3-2	16
WESTBROOK, MAINE	Star	2-1	4
WOONSOCKET, R. I.	Stadium	7-4	50
AUGUSTA, MAINE	Colonial	3-2	16
BERLIN, N. H.	Albert	3-2	16
BURLINGTON, VT.	Majestic	3	25
CONCORD, N. H.	Star	3	17
FITCHBURG, MASS.	Cummings	4-3	25
GARDNER, MAINE	Opera House	2-1	3
LEWISTON, MAINE	Empire	4-3	33
LIVERMORE FALLS, ME.	Dreamland	1)	
		)	3
WILTON, ME.	Bijou	1)	
MONTPELIER, VT.	Playhouse	2-1	6
NORWAY, MAINE	Rex	1)	
SOUTH PARIS, MAINE	Strand	) 1)	3
PORTSMOUTH N H.	~~Capitol~~ Colonial	3-2	15
RUMFORD, MAINE	Strand	3-2	8

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(Schedule A, Cont.)
CHICAGO, ILL.

Pre-Release B:

	Pickford	Fairbanks	D. W. Griffith	Goldwyn Productions	Gloria Swanson	"Ramona"
DIVERSEY	$ 750.00	$ 750.00	$ 750.00	$ 750.00	$ 750.00	$ 750.00
CENTRAL PARK	500.00	500.00	500.00	500.00	500.00	500.00
NORSHORE	1000.00	1500.00	1500.00	1000.00	1000.00	1000.00

	John Barrymore	Arabian Knights	Norma Talmadge	Corinne Griffith	Sorrell	Topsy
DIVERSEY	$ 750.00	$ 750.00	$ 750.00	$ 750.00	$ 750.00	$
CENTRAL PARK	500.00	500.00	500.00	500.00	500.00	$ 500.00
NORSHORE	1000.00	1000.00	1000.00	1000.00	1000.00	$

Joseph M. Schenck (signed)

Sam Dembow, Jr. - V. P. (signed)

48-A

The paragraphs on pages 48 of the printed "Schedule A", beginning with words "Flat rentals specified above for the stated Prerelease A and Prerelease B theatres in Chicago..." and ending with the words on page 49, "... and failing determination by the Committee shall be determined by arbitration as provided in the agreement.", shall be deemed part of and applicable to the flat rentals specified in this typewritten schedule which is substituted for the printed Schedule on page 48.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

(Schedule A, Cont.)
CHICAGO, ILL.

Page 48

Pre-Release A:

	Pickford	Fairbanks	D. W. Griffith	Goldwyn Productions	Gloria Swanson	"Ramona"
UPTOWN	$3250.00	$3500.00	$3250.00	$3250.00	$3250.00	$2500.00
TIVOLI	2750.00	2750.00	2750.00	2750.00	2750.00	2250.00
SENATE	1500.00	2000.00	1750.00	1500.00	1500.00	1500.00
HARDING	1500.00	2000.00	1500.00	1500.00	1500.00	1500.00

	John Barrymore	Norma Talmadge	Sorrell	Topsy	Arabian Knights	Corinne Griffith
UPTOWN	$3000.00	$3250.00	$2750.00	$3500.00	$2500.00	$3250.00
TIVOLI	2750.00	2750.00	2250.00	3750.00	2250.00	2750.00
SENATE	1500.00	1500.00	1500.00	1500.00	1500.00	1500.00
HARDING	1500.00	1500.00	1500.00	1000.00	1500.00	1500.00

48

Joseph M. Schenck (signed)
Sam Dembow, Jr.- V. P. (signed)

The paragraphs on pages 48 and 49 of the printed "Schedule A", beginning with words "Flat rentals specified above for the stated Prerelease A and Prerelease B thea' s in Chicago ..." and ending with the words on page 49, "...and failing determination b the Committee shall be determined by arbitration as provided in the agreement.", shall be deemed part of and applicable to the flat rentals specified in this typewritten Schedule, which is substituted for the printed Schedule on page 48.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

49

(Schedule A, Cont.)

Thereafter the photoplays exhibited under this contract at said theatres shall be exhibited at flat rentals which shall be mutually agreed upon with respect to the several photoplays at the several theatres, from time to time. If prior to August 1, 1928, a photoplay under this agreement is exhibited in any of said Prerelease A or Prerelease B theatres which does not come under any of the descriptions which head the respective columns in this schedule for Prerelease A and Prerelease B theatres, then such particular photoplay shall be exhibited at said theatres at flat rentals which shall be mutually agreed upon with respect to the several photoplays affected at the several theatres. If the Distributor and Exhibitor fail to agree with respect to the flat rental for any one or more photoplays to be exhibited after August 1, 1928, or with respect to any photoplay to be exhibited prior thereto not described under the aforesaid headings, or fail to agree as to such flat rentals for any one or more of the said prerelease theatres in Chicago, then the flat rental for such photoplay or photoplays, or theatre or theatres affected shall be determined by the Committee, and failing determination by the Committee shall be determined by arbitration as provided in the agreement.

Joseph M. Schenck (signed)
Pres.
Sam Katz (signed)

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

SCHEDULE B.

Positive Prints:

The number of positive prints of each photoplay included in the annexed contract for the period ending July 31, 1928, shall not exceed two hundred (200), except as to Douglas Fairbanks, and as to the Douglas Fairbanks photoplay shall not exceed two hundred and twenty-five (225), and the cost of the footage shall be the actual cost.

Cost of Distribution:

Cost of distribution of each photoplay pursuant to the provisions of the annexed contract, shall be twenty-seven and one-half per cent. (27½%) of the gross receipts of such photoplay.

The undersigned certify that the above is Schedule B referred to in the attached contract.

PUBLIX THEATRES CORPORATION,

By Sam Katz (sgnd)

UNITED ARTISTS CORPORATION,

By Joseph M. Schenck (sgnd)
Pres.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

SCHEDULE C.

UNITED ARTISTS CORPORATION does hereby certify that the following is a true and correct list of the motion picture theatres belonging to, in whole or in part, or operated in whole or in part by the United Artists Theatre Circuit, Inc., as of this date:

Rivoli	New York
Rialto	New York
Egyptian	Hollywood
Chinese	Hollywood
United Artists	Los Angeles
United Artists	Seattle
United Artists	Chicago
Loew-United Artists and Penn	Pittsburgh
Loew-United Artists	Columbus
Broadway	Columbus
Valencia	Baltimore
Loew-United Artists	Baltimore
Parkway	Baltimore
Loew-United Artists	Louisville
United Artists	Detroit

UNITED ARTISTS CORPORATION,

By Joseph M. Schenck (signed)
President

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

State of New York, }
County of New York, } ss.:

On this 4th day of February, 1928, before me personally appeared Joseph M. Schenck to me known, who, being by me duly sworn, did depose and say; that he resided in the City of New York, State of New York; that he is the President of UNITED ARTISTS CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors; and that he signed his name thereto by like order.

Irving H. Greenfield (sgnd)
Notary Public, Kings County
Kings Co. Clerk's No. 61, Reg. No. 8059
Cert. filed N. Y. Co.; Clk's No. 94, Reg. No. 8101
Queens Co. Clerk's No. 58
Commission Expires March 30, 1928

State of New York, }
County of New York, } ss.:

On this 4th day of February, 1928, before me personally appeared Sam Katz to me known, who, being by me duly sworn, did depose and say; that he resided in the City of New York, State of New York; that he is the President of PUBLIX THEATRES CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors; and that he signed his name thereto by like order.

Irving H. Greenfield (sgnd)
Notary Public, Kings County
Kings Co. Clerk's No. 61, Reg. No. 8059
Cert. filed N. Y. Co.; Clk's No. 94, Reg. No. 8101
Queens Co. Clerk's No. 58
Commission Expires March 30, 1928

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

JOSEPH M. SCHENCK,

By Joseph M. Schenck (signed)

JOSEPH M. SCHENCK PRODUCTIONS, INC.,

By Joseph M. Schenck (signed)
Pres.

NORMA TALMADGE,

By Norma Talmadge (signed)

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th. 1928.

MARY PICKFORD FAIRBANKS.

By Mary Pickford Fairbanks (sgnd)

THE PICKFORD CORPORATION.

By Mary Pickford Fairbanks (sgnd)
Pres.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

DOUGLAS FAIRBANKS.

By Douglas Fairbanks (signed)

THE ELTON CORPORATION,

By R. N. Fairbanks (signed)
Pres.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

DAVID W. GRIFFITH,

By David W. Griffith (signed)

D. W. GRIFFITH, INC.,

By David W. Griffith (signed)

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount).

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

CHARLES CHAPLIN,

By .....

CHARLES CHAPLIN
FILM CORPORATION,

By .....

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

GLORIA SWANSON,

By Edward B Derr (sgnd)
Her Attorney-in-fact

GLORIA SWANSON
PRODUCTIONS, INC.,

By Edward B Derr (sgnd)
Its Atty-in-fact

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

SAMUEL GOLDWYN,

By Samuel Goldwyn (signed)

SAMUEL GOLDWYN, INC.,

By Samuel Goldwyn (sgnd)
Pres.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

CONSENT.

Each of the undersigned producers, whose motion pictures or photoplays are now being distributed by United Artists Corporation, a Delaware corporation, pursuant to now existing contracts between that corporation and the undersigned, having read the provisions of the attached contract entered into between United Artists Corporation and Publix Theatres Corporation, dated as of the Third day of February, 1928, does hereby approve all of the provisions of the aforesaid contract as they affect the distribution and exhibition of the motion pictures of the undersigned distributed by United Artists Corporation pursuant to now existing contracts between that corporation and the undersigned and consent to its terms, conditions and provisions relative to the exhibition of the undersigned's motion pictures or photoplays in the theatres of the Publix Theatres Corporation as set forth in Schedule "A" of said contract.

Dated, February 4th, 1928.

ART CINEMA CORPORATION,

By Joseph M. Schenck (sgnd)
Pres.

FEATURES PRODUCTIONS, INC.,

By John W. Considine, Sr. (sgnd)

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

AGREEMENT made this third day of February, 1928, between UNITED ARTISTS CORPORATION, hereinafter called "Distributor", and PUBLIX THEATRES CORPORATION, hereinafter called "Exhibitor."

WITNESSETH:

1. This agreement is part of and is executed and delivered simultaneously with a certain printed contract between the parties hereto, bearing the same date for the exhibition in Publix theatres of certain United Artists pictures during a ten-year term, ending July 31, 1937, unless sooner terminated as in that contract provided.

2. The following corrections, amendments and additions are made in and to the said printed contract with the same effect as if set forth therein:

(a) No costs, expenses, losses or charges whatsoever in respect to any roadshowing of any photoplay hereunder shall be included as negative cost or cost of distribution as defined in Clause D of Article V.

(b) Subdivision 10 of sub-paragraph (g) of Clause D of Article IV, is amended by adding thereto the following: "The Exhibitor shall have the right and be afforded the opportunity at all reasonable times to audit and examine the accounts, records, contracts and other documents of the producer, relative to the negative cost and shall have the right to audit at all reasonable times of the accounts, records and documents of the producers and/or the Distributor, relative to distribution charge and cost of positive

prints. This right of audit and inspection may be enforced by appropriate equitable relief and shall not be the subject of arbitration, but any dispute or controversy as to the correctness of any item in said negative cost, cost of distribution or cost of prints shall be first submitted to the committee and then to arbitration before any action or proceedings thereon."

(c) Wherever in said contract the expression "gross receipts" is used in connection with the distribution charge to be included in cost of the photoplays, particularly at page 17 and page 18 and in Schedule "B" of the contract, the said expression means and shall be construed to mean the gross film rentals received by the Distributor and not the gross theatre receipts as defined in subdivision (a) of Article I.

(d) Subdivision (e) of paragraph 1 of Clause D of Article V, relating to the payment of the guarantee and of the additional film rental, is hereby changed and amended to provide that the Exhibitor is to pay to the Distributor the guaranteed amounts not later than seven (7) days after the close of the exhibition of each picture in the particular theatre and will pay the additional compensation provided in the contract not later than thirty (30) days following the close of the month in which the particular photoplay was exhibited at the particular theatre, for which settlement is to be made.

(e) Certain theatres named in Schedule "A" are owned and/or controlled by corporations in which Paramount Famous Lasky Corporation own less than substantially all

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

of the stock. As to the theatres of such corporations, respectively, this agreement shall be binding unless on or before March 1, 1928 (or on or before such later date as Distributor and Exhibitor may agree upon and specify in writing) the Exhibitor obtains and receives the approval and assumption by said corporations of this contract insofar as it affects the theatres of the respective corporations. As to any such corporation which does not so approve and assume this contract prior to such date, this contract shall not apply.

(f) Subdivision 3 of Clause D of Article V means and shall be construed to mean that the investment of Paramount Famous Lasky Corporation in any subsidiary corporation, whether the investment be by way of ownership of stock or by way of loans to such corporation, shall be used as a basis for measuring the value of the net assets of the subsidiary corporation as of the date of Paramount Famous Lasky Corporation making the investment, regardless of the then book value of the assets of such corporation, for example if Paramount Famous Lasky Corporation acquired Fifty per-cent (50%) of the stock of a corporation on June 1, 1926, for Two hundred thousand dollars ($200,000.00) then at the date the net tangible assets of the corporation would be assumed, for the purpose of this contract, as being valued at Four hundred thousand dollars ($400,000.00) even though the book value thereof should be more or less and as of the date of such acquisition by Paramount Famous Lasky Corporation the excess portion of the $400,000. over the book value of the difference between the book value and the $400,000. if the latter be less than the book value would be

added to or subtracted from the book value of the tangible assets of the corporation as of that date and would be equitably apportioned among such tangible assets, and such assets as so valued would be depreciated and/or amortized on the basis of such valuations at the usual rates of amortization and/or depreciation applicable thereto. Any addition to such value as so determined and as depreciated or amortized from time to time, whether such addition be by way of reinvestment of profits of the subsidiary corporation in tangible assets or whether by way of investment through stock ownership or loans by Paramount or otherwise so far as the same is invested in tangible assets would be added to the valuations fixed as above provided and would be depreciated accordingly. However, only such part of said investment and/or additions thereto as apply to the particular theatres covered by this contract shall be used for the purpose of computing profits of such theatres to measure additional film rental.

For the purpose of further simplification and economy in accounting, a representative of the distributor and a representative of the exhibitor shall agree on an average weekly amount to be charged as expense for each respective theatre for items of expense which are not directly and solely chargeable to the particular run of any photoplay to be exhibited hereunder at such theatre. These average sums shall be based on the experience of the exhibitor with respect to the particular theatres and the expenses involved, during the preceding twelve (12) months or such portion thereof as exhibitor shall have operated the theatre, but in amount the averages shall be the estimated expenses for the current year as the current year is defined in the contract. If such

representatives fail to agree in any one or more particulars the differences between them shall be settled by the committee or by arbitration, and the decision settling the same shall be binding upon the parties hereto. This amendment shall not affect the use of quarterly periods as provided in subdivision 3 of clause (D) of Article V for the determination of the expense items therein provided to be figured on the basis of a quarterly period unless the said representatives of the parties shall otherwise agree in writing.

IN WITNESS WHEREOF the parties have executed this agreement contemporaneously with the aforesaid printed agreement and as a part thereof as of the day and year first above written.

UNITED ARTISTS CORPORATION

(SEAL)

By Joseph M. Schenck (sgnd)
Pres.

PUBLIX THEATRES CORPORATION

(SEAL)

By Sam Dembow, Jr. (sgnd)
V. P.

Agreement United Artists Corporation with Publix Theatres Corporation (Government Exhibit 195 in United States v. Paramount)

City, County and State of New York, ss.:

On this 4th day of February, 1928, before me personally came JOSEPH M. SCHENCK to me known, who, being by me duly sworn, did depose and say, that he resides in the Borough of Manhattan, City and County of New York; that he is the President of UNITED ARTISTS CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IRVING H. GREENFIELD (sgnd)
Notary Public, Kings County
Kings Co. Clerk's No. 61, Register's No. 8059
Cert. Filed N. Y. Co. Clk's No. 94, Reg. No. 8101
Queens Co. Clerk's No. 58
Commission Expires March 30, 1928.

City, County and State of New York, ss.:

On this 4th day of February, 1928, before me personally came SAM DEMBOW, JR., to be known, who, being by me duly sworn, did depose and say, that he resides in the Borough of Manhattan, City and County of New York; that he is the Vice-President of PUBLIX THEATRES CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IRVING H. GREENFIELD (sgnd)
Notary Public, Kings County
Kings Co. Clerk's No. 61, Register's No. 8059
Cert. Filed N. Y. Co. Clk's No. 94, Reg.'s No. 8101
Queens Co. Clerk's No. 58
Commission Expires March 30, 1928.

Interrogatory Answers by United Artists Corporation in *United States* v. *Paramount* (Government Exhibit 142, *United States* v. *Paramount*)

AGREEMENT made between UNITED ARTISTS CORPORATION, hereinafter called "Distributor", and PUBLIX THEATRES CORPORATION, hereinafter called "Exhibitor", this third day of February, 1928.

WITNESSETH:

1. This agreement is part of and made at the same time as a printed contract between the parties hereto, for the exhibition in Publix theatres of certain United Artists pictures during a ten year term, ending July 31, 1937, unless sooner terminated as in that contract provided.

2. In addition to the provisions of the said printed contract, it is agreed that if, during the term of the contract, United Artists Corporation or its assignee or successor shall distribute or undertake to distribute any photoplays commonly known as "ordinary Westerns" the negative cost of which shall not exceed One hundred twenty-five thousand ($125,000) dollars per photoplay, and/or any motion picture in which appears any star, featured player or other artist who is now or who hereafter during the term of this contract may be under contract with Paramount Famous Lasky Corporation to appear in motion pictures produced and/or distributed by Paramount Famous Lasky Corporation, or any motion picture which is produced, supervised or directed by any director who is now or may hereafter during the term of this contract be under contract with Paramount Famous Lasky Corporation, to produce, supervise or direct any motion picture produced and/or distributed by Paramount Famous Lasky Corporation, then and in each and every instance, the Distributor agrees to

notify the Exhibitor of its intention so to distribute such motion picture and in each and every instance the Exhibitor shall have the right and option upon written notice of its decision so to do, to exclude such motion picture from exhibition under the aforesaid contract, and in such case Exhibitor shall be under no obligation to accept such photoplay or photoplays for exhibition under said contract.

3. Acceptance by the Exhibitor for exhibition under said contract of any one or more of such photoplays shall not be a waiver or release of its right to reject other of such photoplays. If the Exhibitor shall have elected not to accept any one or more of such photoplays it may, nevertheless, agree with the Distributor, in writing, to exhibit in any one or more of the theatres of its circuit, such photoplay or photoplays rejected either on the same terms and conditions as are set forth in the contract or on other terms and conditions, but in each such instance such contracts shall be in addition to and apart from this contract and shall not constitute a waiver or release of Exhibitor's rights under this supplemental agreement.

IN WITNESS WHEREOF the parties have executed this agreement contemporaneously with the aforesaid printed agreement and as a part thereof as of the day and year first above written.

UNITED ARTISTS CORPORATION

(SEAL)

By Joseph M. Schenck (sgnd)
Pres.

PUBLIX THEATRES CORPORATION

(SEAL)

By Sam Dembow, Jr. (sgnd)
V. P.

Interrogatory Answers by United Artists Corporation in *United States* v. *Paramount* (Government Exhibit 142, *United States* v. *Paramount*)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

U. S. Government—Anti Trust Suit

Producer-Exhibitor Defendants..... Loew's Inc. — Grand Theatre
Paramount —(Capitol
(Fox
(Georgia
(Paramount

Atlanta — **Features**

Picture	Theatre	Playdate	Rental
Dodsworth	Grand	10/ 9-15/36	$1,813.00
Woman Chases Man	Grand	5/14-20/37	1,249.00
Beloved Enemy	Grand	1/22-28/37	1,808.00
You Only Live Once	Grand	1/29- 2/ 4/37	1,599.00
Gay Desperado	Grand	11/20-25/36	800.00
		Total:	$7,269.00

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

U.S. GOVERNMENT - ANTI TRUST SUIT

THEATRES NOT AFFILIATED WITH DEFENDANTS

ATLANTA - FEATURES

THEATRE	DODSWORTH Playdate	DODSWORTH Rental	WOMAN CHASES Playdate	WOMAN CHASES Rental	BELOVED ENEMY Playdate	BELOVED ENEMY Rental	YOU ONLY LIVE ONCE Playdate	YOU ONLY LIVE ONCE Rental	SAY NEVERMIND Playdate	SAY NEVERMIND Rental
Center	3/21-23/37	$30.00	10/15-16/37	$17.50	4/30-5/1/37	$22.50	5/21-22/37	$15.00	5/9/37	$17.50
Buckhead	10/6-7/37	25.00	8/4/37	30.00	Not Bought		Not Bought		Not Bought	
Cascade	Not Bought		8/8-9/37	10.00	" "		" "		" "	
DeKalb	" "		8/16-17/37	25.00	" "		" "		" "	
Empire	" "		7/25-26/37	40.00	" "		6/2-3/37	25.00	" "	
Fairfax	" "		8/29-30/37	30.00	" "		Not Bought		" "	
Fairview	8/12/37	15.00	11/7-8/37	12.50	10/5/37	15.00	10/9/37	12.50	9/26/37	12.50
Milan	3/21-22/37	30.00	9/23-24/37	25.00	4/25-26/37	30.00	5/20-21/37	20.00	4/22-23/37	25.00
Palace	Not Bought		9/2-3/37	30.00	Not Bought		Not Bought		Not Bought	
Park	12/1/37	15.00	11/15-16/37	15.00	Subst. VESCOPEX 12/29/37	15.00	6/26-29/37	12.50	Cont.Conn.	25.00
Piedmont	11/14-15/37	15.00	4/24-25/38	15.00	11/28-29/37	15.00	1/23-24/38	15.00	11/19-20/37	15.00
Ponce de Leon	3/28-30/37	30.00	10/10-11/37	17.50	5/2-3/37	22.50	5/27-28/37	15.00	4/29-30/37	17.50
Stewart	3/8-10/38	15.00	4/17-18/38	15.00	5/24-25/38	15.00	2/13-14/38	15.00	2/23-24/38	15.00
Temple	5/25-27/37	17.50	10/7-8/37	15.00	9/28-29/37	17.50	7/4-5/37	12.50	8/10/37	12.50
Tenth Street	9/25-27/37	25.00	8/5-6/37	30.00	Not Bought		Not Bought		Not Bought	
Veterans Adm.	3/18/37	12.50	Not Bought		" "		6/3/37	12.50	6/10/37	12.50
West End	Not Bought		8/25-27/37	30.00	" "		Not Bought		Not Bought	
Rockhead	4/29-30/37	22.50	10/10-11/37	17.50	10/21-22/37	22.50	7/4-5/37	22.50 15.00	6/17-18/37	17.50
Canoe	2/1/40	15.00	Not Bought		Not Bought		Not Bought		Not Bought	
Kirkwood	4/29-30/37	20.00	9/16-17/37	15.00	6/20-21/37	20.00	5/19/37	15.00	5/5/37	15.00
Brookhaven	Not Bought		Not Bought		11/21-22/37	17.50	12/9-10/37	12.50	Not Bought	
Emory	5/2-3/39	12.50	" "		Not Bought		Not Bought		" "	
Hangar	Not Bought		" "		" "		11/13-14/39	12.50	" "	
Madison	4/7-8/37	22.50	9/30/37	15.00	6/9-10/37	22.50	6/16-17/37	15.00	" "	
WHITE RUNS - SUB TOTALS:		$322.50		$405.00		$235.00		$225.00		$160.00
Harlem	Not Bought		Not Bought		Not Bought		2/28-3/1/39	30.00	Not Bought	
Lincoln	" "		" "		" "		3/15-16/39	20.00	" "	
Royal	2/7-9/37	45.00	10/28-29/37	35.00	4/7-8/37	45.00	4/28-29/37	20.00	4/23-37	20.00
Eighty-One	Not Bought		Not Bought		Not Bought		4/25-27/37	25.00	3/14-15/37	25.00
Ashby	2/14-16/37	35.00	11/5-6/37	27.50	4/15-16/37	35.00	5/9-11/37	15.00	5/12/37	15.00
Lenox	Subst.SPLENDOR 6/13-14/37	20.00	Sub.DODSWORTH(Hom 1/5-6/38	17.50	Subst. "FLAT" (Ashby) 3/31/37	20.00	6/14-15/37	20.00	2/18-19/38	12.50
COLORED RUNS - SUB TOTALS:		$100.00		$80.00		$100.00		$130.00		$72.50
GRAND TOTALS:		$422.50		$485.00		$335.00		$355.00		$232.50 (This total does not (include cancellation (of $25. in Park.

(C) GOVERNMENT EXHIBIT 142 IN PARAMOUNT

WARNER BROS. CIR.

PHILADELPHIA

THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	THE GAY DESPERADO PLAYDATES	RENTAL
Aldine	9/23-10/15/36	$13,638.63	—		12/30-1/14/37	$9,095.80	2/5-16/37	$3,236.73	10/16-29/36	$4,348.72
Alhambra	11/22-3/36	216.45	8/4-5/37	$46.18	2/28-3/1/37	217.52	3/24-25/37	157.86	12/23-23/36	89.40
Allegheny	11/27-28/36	200.38	7/23-24/37	67.28	—		—		—	
Astor	12/4-5/36	235.17	8/11-12/37	89.38	3/3-4/37	119.82	4/9-10/37	177.16	12/27-28/36	206.20
Auditorium	12/22/36	20.00	8/19/37	20.00	3/17/37	20.00	4/16-17/37	40.00	1/7/37	20.00
Avon	12/16/36	32.32	9/1/37	19.00	3/25-26/37	24.36	4/11-12/37	77.90	1/13/37	22.10
Benn	11/25-26/36	242.14	7/28-29/37	120.51	2/28-3/2/37	235.94	3/31-4/1/37	137.52	12/20-22/36	159.72
Boyd	8/12-18/37		8/12-18/37	2560.05						
Broadway	Pd.& Shelved	341.00	—		2/17-19/37	386.25	—		12/9-11/36	351.59
Bromley	12/3-5/36	394.46	8/8-10/37	148.43	2/28-3/2/37	227.88	4/7-9/37	151.40	12/20-22/36	197.34
Cadet	3/10/37	20.00	—		4/23/37	15.00	6/21/37	15.00	—	
Capitol	1/2/37	20.00	9/4/37	20.00	3/30/37	20.00	4/23-24/37 3/31/38(Repeat)	40.00 20.00	1/15/37	20.00
Center	4/28/37	25.00	8/21/37	25.00	4/7/37	25.00	4/10/37	25.00	6/17/37	25.00
Circle	11/13-16/36	1024/13	—		—		—		12/8-10/36	348.05
Colney	11/28-30/36	409.79	8/1-2/37	105.53	2/28-3/1/37	170.85	4/11-12/37	144.12	—	
Colonial,Gtn.	—		—		—		3/28-29/37	358.70	—	
Columbia	12/9-10/36	85.70	8/20/37	35.80	3/12/37	38.30	4/8/37	48.55	—	
Commodore	11/26-27/36	293.70	8/1-2/37	103.01	2/28-3/2/37	228.80	3/31-4/1/37	87.40	12/20-21/36	93.14
Cross Keys	11/25-26/36	315.30	7/30-31/37	161.94	2/25-27/37	342.30	3/31-4/1/37	185.88	12/20-22/36	245.45
Earle,Reed St.	12/7-8/36	90.69	8/25-26/37	80.89	3/16-17/37	107.03	4/9/37	95.48	1/5-6/37	85.10
Fairmount	12/2-3/36	130.14	8/10-11/37	100.31	3/2-3/37	134.30	4/6-7/37	120.14	12/29-30/36	116.63
Family	12/22/36	15.00	—		3/18/37	15.00	4/16/37	15.00	1/6/37	15.00
Felton	12/6-7/36	163.32	8/10-11/37	75.99	3/12-13/37	171.66	4/21-22/37	94.88	12/22-23/36	52.09
Forum	12/1-2/36	134.56	8/10-11/37	120.26	3/3-4/37	122.60	4/13/37	89.66	12/29-30/36	102.89
Frankford	3/14-15/37	50.00	8/26/37	22.50	4/4-5/37	50.00	5/21-22/37	50.00	4/1/37	22.50
Darrowgate	12/16/36	47.24	8/18/37	48.55	3/12-13/37	140.49	4/8-9/37	84.04	12/31/36	31.83
Kolmo	12/6-7/36	78.44	8/18/37	32.51	3/2-3/37	55.70	4/16-17/37	94.44	12/30-31/36	57.70

Page 6

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

WARNER BROS. CIR.

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	PHILADELPHIA THE GAY DESPERADO PLAYDATES	RENTAL
Imperial, 52nd Street	12/13/36	$40.00	8/17/36	$15.00	3/17/37	$40.00	4/18/37	$15.00	1/3/37	$15.00
Imperial, 60th St.	12/6-7/36	144.95	8/10-11/37	67.33	3/10-11/37	99.00	4/9-10/37	137.62	1/3-4/37	105.84
Karlton	—		—		1/15-21/37	1075.14	—		—	
Keith's	10/23-29/36	1566.63	8/25-7/2/37	742.19	—		2/26-3/3/37	547.74	—	
Kent	12/1-2/36	141.30	—		2/28-3/1/37	298.47	3/30-31/37	194.28	12/22-23/36	82.71
Keystone	12/9-10/36	129.07	8/16/37	56.08	3/10/11/37	114.80	4/13/37	66.41	12/29-30/36	98.43
Leader	12/13-14/36	188.01	8/11-12/37	103.68	3/10-11/37	138.27	4/7-8/37	169.07	1/2-4/37	152.68
Liberty, Col.Ave.	12/1-2/36	128.34	8/18-19/37	75.66	3/4-5/37	127.25	4/6-7/37	151.20	1/5-6/37	90.48
Liberty, Tacony	11/27-28/36	181.77	8/4/37	55.10	2/24-25/37	88.92	4/4-5/37	149.03	12/22-23/36	39.55
Lindley	12/16-17/36	99.11	8/17/37	26.68	3/16-17/37	98.03	4/27/37	40.03	1/6/37	44.42
Lindy	12/11-12/36	137.30	8/13-14/37	93.82	3/14-15/37	95.30	4/15/37	54.13	1/3-4/37	102.26
Logan	11/20-23/36	794.14	7/23-26/37	380.14	2/16-21/37	532.76	3/27-29/37	410.00	12/8-10/36	193.58
Midway	Pd.& Shelved	190.00	—		2/17-19/37	245.28	3/20-23/37	591.93	12/9-11/36	164.14
Model	12/3-4/36	142.56	8/12-13/37	70.05	3/10-11/37	120.38	4/1-2/37	188.54	12/27-28/36	206.71
New Palace	12/31/36	15.00	9/7/37	15.00	4/2/37	15.00	4/28/37 3/16/38(Rep.)	15.00 15.00	1/19/37	15.00
Orpheum	—		7/17-20/37	489.79	2/13-16/37	659.01	3/20-23/37	563.04	—	
Northeastern	12/13-14/36	60.00	8/18/37	40.00	3/10-11/37	80.00	4/23/37	30.00	1/6/37	30.00
Ogonts	12/27-28/36	80.00	9/1-2/37	40.00	3/21-22/37	50.00	5/9-10/37	40.00	1/13-14/37	25.00
Orient	12/13-14/36	40.00	8/13-14/37	15.00 15.00	3/18-19/37	40.00	4/16-17/37	30.00	1/9/37	15.00
Orpheum	11/13-19/36	1016.04	7/16-22/37	628.88	2/12-17/37	883.49	—		12/4-6/36	273.36
Palace	11/6-12/36	1919.32	7/9-15/37	845.18	2/5-11/37	1212.68	—		—	
Park	11/25-26/36	383.91	8/1-2/37	137.16	2/26-27/37	326.03	4/2-3/37	321.94	12/23-24/36	111.41
Plaza	11/22-23/36	182.17	8/1-2/37	98.56	2/28-3/1/37	164.51	3/30-31/37	219.40	12/20-21/36	120.11
Poplar	3/11/37	12.35	9/26-27/37	20.00	4/15-/37	12.05	4/20/37	10.06	3/18/37	6.81
Princess	12/27-28/36	15.00	—		3/28-29/37	30.00	4/18-19/37	30.00	1/10-11/37	30.00

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

(3)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

WARNER BROS. CIR.

PHILADELPHIA

THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	THE DAY DESPERADO PLAYDATES	RENTAL
Richmond	12/8-9/36	$58.18	8/11/37	$27.33	3/10-11/37	$99.05	4/6-7/37	$128.84	12/29/36	$56.13
Riviera	12/23/36	40.00	8/18/37	25.00	4/2/37	40.00	5/9/37	25.00	1/13/37	20.00
Roosevelt	--		7/16-19/37	3631.76	2/13-16/37	569.24	3/20-23/37	459.81	12/8-10/36	248.05
Savoia			7/17-20/37	274.28	—		—		—	
Savoy	1/5/37	15.00	9/5/37	15.00	3/30/37	15.00	4/27/37	15.00	1/13/37	15.00
Sedgwick	12/103/36	200.04	8/8-9/37	65.68	2/28-3/1/37	148.75	4/7-8/37	72.24	12/22-3/36	66.84
69th Street	—		7/16-19/37	388.16	2/13-18/37	737.01	3/20-23/37	373.44	—	
State	11/13-16/36	1147.94	—		—		—		12/8-10/36	282.38
Strand	11/29-12/1/36	274.70	8/4-6/37	160.85	2/28-3/2/37	257.94	4/4-5/37	202.11	12/16-18/36	109.58
Terminal	12/4-5/36	85.00	8/11-12/37	60.00	3/10-11/37	85.00	4/9-10/37	80.00	1/3/37	65.00
333 Mkt.St.	12/8/36	52.58	8/18/37	33.11	3/11-12/37	93.51	4/7/37	60.01	12/29/36	39.40
Tower	11/13-16/36	1004.03	—		—		—		12/8-10/36	207.44
Uptown	11/14-17/36	901.34	7/20-22/37	270.70	2/15-17/37	285.88	3/19-22/37	586.71	12/3-4/36	221.55
Victoria	—		—		—		3/9-11/37	417.66	12/4-7/36	609.73
Wishart	12/8-9/36	114.48	8/12/37	42.55	3/7-8/37	135.17	4/6-7/37	110.14	12/29-30/36	69.08
Wynne	12/6-7/36	191.17	8/8-9/37	62.80	3/5-6/37	179.79	4/11-12/37	135.78	12/25-28/36	164.95
Lansdowne	12/3/36	88.68	—		3/10-11/37	70.17	4/9/37	31.31	1/1-2/37	140.81
Oxford	12/9/36	26.57	8/20-21/37	50.00	3/9/37	22.10	7/8/37	20.00	1/6/37	23.11
TOTALS		$30,010.03		$13,114.66		$21,009.28		$12,814.27		$10,773.33

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

							PHILADELPHIA			
THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	THE GAY DESPERADO PLAYDATES	RENTAL
Admiral	12/20-21/36	$85.00	9/7-8/37	$65.00	3/21-22/37	$85.00	4/27-28/37	$50.00	1/15-6/37	$50.
Alton	2/26-27/37	25.00	10/1-2/37	25.00	4/12-13/37	35.00	6/4-5/37	20.00	3/8-9/37	30.
Ambassador	12/6-8/36 6/16/37	140.00 20.00(Rep.)	8/6-7/37	100.00	3/14-16/37	110.00	4/11-13/37	100.00	1/1-2/37	100.
Apollo	12/18-19/36	100.00	8/17-18/37	75.00	3/16-17/37	100.00	4/25-26/37	70.00	1/26-7/37	75.
Arcadia	—		—		—		—		11/19-25/36	580.14
Avenue	1/19/37	25.00	9/21-22/37	32.50	3/31-4/1/37	35.00	5/12-13/37	30.00	1/24-5/37	32.50
Baltimore	12/15-16/37	20.00	—		—		—		—	
Bend Box	1/4-7/37	98.85	—		—		—		—	
Boyd	—		9/23/37	17.50	9/29/37	17.50	9/30/37	15.00	8/13-4/37	32.50
Bell	3/10/37	20.00	9/22/37	17.50	4/9/37	20.00	5/4-5/37	15.00	2/18/37	20.00
Bluebird	1/3-4/37	50.00	8/31-9/1/37	45.00	3/30-1/37	50.00	5/2-3/37	40.00	1/27-8/37	45.00
Boyd	2/7/37	20.00	10/17/37	15.00	6/6/37	20.00	6/13/37	15.00	3/14/37	15.00
Broad	—		8/25-6/37	35.00	—		7/20/37	25.00	—	
Comet	12/28/36	20.00	9/10/37	20.00	4/3/37	30.00	5/2-3/37	5/1/37-25.00	1/22/37	25.00
Casino	3/29-30/37	20.00	10/22-23/37	15.	4/9-10/37	20.00	5/7-8/37	15.00	4/23-24/37	17.50
Castle	3/30-/37	20.00	9/12-13/37	20.00	4/11-12/37	25.00	5/2-3/37	20.00	3/29/37	17.50
Crown	12/11-12/36	60.00	8/20-21/37	45.00	3/14-15/37	50.00	4/16-17/37	50.00	12/31-1/1/37	50.
Earle	12/25-6/36	50.00	9/5-6/37	30.00	3/28-9/37	40.00	5/7-8/37	30.00	1/24-5/37	35.00
Fay	4/23/37	25.00	9/4/37	95.00	4/23-4/37	25.00	5/27/37	20.00	—	
Fairfield	12/16-7/36	50.00	8/30-1/37	40.00	3/22-3/37	40.00	4/17-8/37	35.00	3/24-5/37	40.00
Fidel	—		10/13-4/37	15.00	—		6/15/36	15.00	1/27-8/37	17.50
Fox	8/8/37	15.00	8/31/37	12.50	5/23-4/37	15.00	6/30-7/1/37	12.50	5/21-2/37	12.50
Gay	—		—		—		10/21/37	17.50	6/8/37	17.50
Globe	—		9/24-5/37	20.00	5/27/37	25.00	6/16/37	17.50	4/18-9/37	25.00
Goldman	9/9/37	15.00	9/21/37	15.00	9/14/38	15.00	8/23/37	15.00	7/30-1/37	17.50
Grand	12/12-6/36	90.00	8/18-9/37	60.00	3/10-11/37	80.00	4/14-5/37	60.00	12/29-30/6	70.00
Karlton	1/3-4/37	30.00	9/19-20/37	25.00	4/11-12/37	30.00	4/30/37	20.00	1/29/37	25.00
Keith							11/7-30/36	15.00		

(#2.) GOVERNMENT EXHIBIT 142 IN PARAMOUNT

PHILADELPHIA

THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	GAY DESPERADO PLAYDATES	RENTAL
Edgemont	—		9/12-3/37	15.00	10/12/37	15.00	9/5-6/37	15.00	9/26-7/37	$12.50
Embassy	1/27/37	20.00	9/6-9/37	17.50	4/5-6/37	20.00	5/8-9/37	15.00	2/3/37	15.00
Erlen	12/1[illegible]-4/36	125.00	8/8-19/37	100.00	3/12-3/37	125.00	5/11-12/37	100.00	12/27-8/36	100.00
Eureka	1/3-4/37 11/9/36	25.00 15.00(Rep.)	9/5-6/37	17.50	3/28-9/37	20.00	5/1/37	17.50	1/31-2/1/37	20.00
Falls	8/5/36	15.00	11/7/37	15.00	—		—		11/14/37	15.00
Fern Rock	12/6-9/36	60.00	8/10-11/37	45.00	3/9/37	60.00	4/26/37	45.00	1/5/37	60.00
58th St.	12/25-6/36 5/23/37	50.00 20.00(Rep.)	8/29-30/37	30.00	3/28-9/37	40.00	5/16-7/37	30.00	1/22-3/37	35.00
Forepaugh's	7/20/37	40.00	3/31/38	30.00	7/19/37	45.00	11/9/37	35.00	6/24/37	30.00
Frolic	5/9/37	25.00	11/14/37	20.00	6/27/37	20.00	12/5/37	20.00	4/11/37	20.00
Gem	1/6-7/37	22.50	9/8-9/37	20.00	3/31-4/1/37	22.50	4/28-6/37	15.00	1/20-1/37	17.50
Girard	10/4/37	25.00	—		—		9/26/37	20.00	9/29/30/37	25.00
Globe	4/1/37	15.00	9/21/37	15.00	4/16-17/37	20.00	4/26/37	15.00	4/4-5/38	15.00
Grand	11/21-3/36	175.00	8/3-4/37	150.00	2/28-3/2/37	175.00	3/31/-4/2/37	125.00	12/20-22/36	125.00
Grant	12/25-6/36	50.00	8/24-5/37	30.00	3/21-22/37	40.00	4/18-19/37	25.00	1/12-13/37	25.00
Greenway	1/19-20/37	25.00	10/3-4/37	17.50	4/20-1/37	25.00	5/23-4/37	17.50	3/11/37	20.00
Gt.Northern	12/18-9/36	125.00	9/23-3/37	100.00	3/29-30/37	125.00	5/5-6/37	100.00	1/8-9/37	100.00
Hamilton	1/1-2/37	35.00	9/1-2/37	25.00	3/21-2/37	35.00	5/2-3/37	25.00	1/19/37	25.00
Haverford	—		—		—		3/13-4/38	15.00	5/16-7/37	15.00
Hill	12/27-6/36 2/23-4/37	30.00 17.50(Rep.)	8/29-30/37	25.00	4/6-7/37	30.00	5/12-3/37	20.00	1/19-20/37	20.00
Hollywood	1/13/37	25.00	9/14-5/37	17.50	4/1/37	25.00	5/12-3/37	17.50	1/27/37	20.00
Howard	1/26-7/37	50.00	9/26-7/37	35.00	4/4-5/37	50.00	5/16-7/37	35.00	2/2-3/37	40.00
Ideal,19th St.	12/31-1/1/37	25.00	9/28/37	20.00	4/27-8/37	25.00	5/9-10/37	17.50	2/21-2/37	20.00
Italia	1/24-5/37	22.50	11/4/37	17.50	4/30/37	22.50	5/23/4/37	22.50	1/31-2/1/37	17.50
Jeffries-Rox.	11/28-12/1/36	168.44	7/31/8/2/37	130.05	3/13-15/37	157.88	4/24&26/37	132.02	12/25-8/36	121.43
Jewel	1/3-4/37	25.00	9/21/37	25.00	4/25-6/37	30.00	5/9-10/37	17.50	2/13/37	15.00
Joy	1/23-3/37	25.00	9/27-8/37	20.00	4/12-13/37	25.00	5/14-15/37	15.00	2/8-9/37	17.50

962 421

Page 16

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

(93.)

PHILADELPHIA

THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	THE GAY DESPERADO PLAYDATES	RENTAL
Dumbo	12/29-30/36	60.00-	—		—		—		—	
Lenox	12/6-7/36	101.22	8/24-5/37	82.29	3/12-13/37	125.26	4/11-2/37	80.82	12/29-30/36	90.00
Lehigh	12/17-19/36	80.00	8/26-28/37	75.00	3/16-20/37	60.00	4/22-24/37	60.00	1/7-9/37 11/27-28	50.00 27.50
Locust	7/14-5/37	22.50	—		5/24-5/37	22.50	—		—	
Lorraine	12/30/36	25.00	9/10/37	20.00	5/21/37	20.00	5/3-4/37	17.50	2/3-4/37	25.00
Lyric,2nd St.	1/26-7/36	30.00	9/28-29/37	25.00	5/11-2/37	30.00	5/23-4/37	20.00	2/5/37	25.00
Mayfair	1/27-8/37	65.00	8/30-1/37	45.00	5/17-8/37	65.00	4/25-6/37	40.00	2/28/37	35.00
Merry	2/7-8/37	20.00	11/14-5/37	17.50	7/6/37	20.00	7/2-3/37	15.00	2/12-13/37	15.00
New Broadway	2/4/37	30.00	10/7/37	20.00	4/13/37	30.00	5/25/37	20.00	2/11/37	20.00
New Colonial	1/12-3/37	40.00	—		—		6/1-2/37	40.00	2/4/37	25.00
New Dixie	3/21-3/37	35.00	—		—		5/11/37	15.00	--	
New Empress	1/4-15/37	100.00	9/8/37	75.00			10/21/37	15.00	1/28-9/37	85.00
Ideal	1/7-8/37	D.D.	9/3-3/37	DD	4/15-6/37	50.00	5/7-8/37	35.00	1/21-2/37	DD
New Garden	8/29/37	25.00	5/5/38	20.00	6/14/37	25.00	12/23/37 4/4/38 (Rep.)	20.00 10.00	7/26/37 11/4/37(Rep.)	22.50 12.50
New Penn	12/28/36	35.00	9/6/37	25.00	4/7/37	35.00	5/2/37	20.00	2/1/37	25.00
New Ritz	1/6/37	25.00	10/13/37	17.50	4/2-/37	22.50	5/8/37	15.00	4/29/37	17.50
News	3/5-11/40	125.00	—		--		—		—	
Overbrook	12/6-8/36 11/3/37	100.00 30.00(Rep.)	8/15-6/37	90.00	3/5-6/37	100.00	4/9-10/37	70.00	12/27-8/36	100.00
Palm	12/20-1/36	100.00	8/19/37	50.00	3/21-2/37	100.00	4/16-7/37	65.00	1/12-3/37	50.00
Pastime	3/17/37	20.00	9/3-4/37	50.00	3/30-1/37	65.00	4/18-9/37	45.00	—	
Pt.Breeze	12/29-30/36	65.00	—		—		—		1/29-30/37	45.00
Pearl	12/28-9/36	65.00	9/12/37	30.00	4/15-7/37	50.00	4/30-5/1/37	40.00	2/1-2/37	40.00
Penn	2/12/37	20.00	10/10-11/37	20.00	6/3/37	20.00	6/11/37	15.00	2/11/37	17.50
Pike	—	--	—		—		—		3/22/3/37	20.00
President	1/20-21/37	70.00	--		4/11-12/37	70.00	5/2-3/37	40.00	2/7-8/37	50.00

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

(#4)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

PHILADELPHIA

THEATRE	DODSWORTH PLAYDATES	RENTAL	WOMAN CHASES MAN PLAYDATES	RENTAL	BELOVED ENEMY PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	THE GAY DESPERADO PLAYDATES	RENTAL
Regal	12/30-1/36	40.00	8/20-1/37	30.00	3/19-20/37	40.00	4/23-4/37	25.00	1/19-20/37	30.00
Regis	12/31-2/36	30.00	10/8-9/37	20.00	4/21-2/37	30.00	5/7-8/37	20.00	2/26-7/37	25.00
Ronel	1/3-4/37	35.00	9/10-11/37	25.00	3/30-1/37	35.00	Pd.4 Shelved	12.50	1/26/37	25.00
Rialto	12/11-2/36	75.00	8/18-9/37	60.00	3/3-10/37	75.00	4/16-17/37	55.00	1/10-11/37	50.00
Ridge	12/15-6/36	65.00	8/28-9/37	50.00	3/23-4/37	65.00	4/18/37	40.00	1/22/37	35.00
Rio	—		5/29/38	15.00	5/15/38	12.50	3/13/38	12.50	7/27/38	17.50
Ritz	12/27-8/36	75.00	8/24-5/37	50.00	3/25-7/37	65.00	5/16-7/37	50.00	1/11-2/37	40.00
Rivoli	12/17-9/36	174.62	8/20-1/37	96.69	3/19-20/37	121.77	4/23-4/37	104.40	1/12-3/37	86.21
Ruby	4/4/37	12.50	9/17/37	12.50	5/28/37	12.50	5/11-12/37 -14.60 15.00 11/27/38 (Rep.) 10.00		4/10/37	10.00
Royal	12/6-8/36	200.00	8/1-2/37	125.00	3/14-5/37	200.00	3/28-30/37	125.00	12/30-1/36	100.00
Southern	1/8-9/37	30.00	9/17-8/37	25.00	4/9-10/37	30.00	4/28-9/37	20.00	2/7-9/37	35.00
Spruce	1/9-10/37	20.00	9/24-5/37	15.00	5/16/37	15.00	6/7-8/37	15.00	5/14-5/37	12.50
Standard	12/22/36	35.00	8/23/37	25.00	3/26-7/37	35.00	4/12-13/37 20.00 7/6/38(Rep.) 20.00		1/8-9/37	20.00
Star	—		10/15/37	17.50	—		8/3/37	17.50	—	
Strand	—		—		—		5/17-8/37	20.00	3/5/37	15.00
Stratford	12/13-4/36	100.00	8/22-3.37	70.00	4/2-3/37	100.00	4/16-7/37	80.00	1/8-9/37	8.00
Susquehanna	12/11-12/36	55.00	8/27-8/37	40.00	3/14-5/37	50.00	4/23-4/37	37.50	1/17-8/37	40.00
Temple	2/23-/37	17.50	—		—		11/10/38	17.50	2/9/37	15.00
Tioga	1/2/37	DD	9/25/37	DD	4/10/37	DD	5/15/37	DD	1/15/37	DD
Towne	12/24/36	22.50	9/2/37	17.50	3/25/37	22.50	5/13/37	15.00	1/14/37	17.50
Unique	12/25-6/36	50.00	8/27-8/37	35.00	3/19-20/37	50.00	4/18-9/37	30.00	1/13-4/37	35.00
Upsal	2/6/37	20.00	9/9-10/37	25.00	3/19-20/37	25.00	4/30-5/1/37	25.00	2/5/37	20.00
Venice	1/27-8/37	25.00	9/12-13/37	30.00	4/13-4/37	25.00	5/4-5/37	17.50	2/12-3/37	20.00
Viola	12/29-30/36	22.50	9/15/37	17.50	4/13-4/37	22.50	5/28/37	17.50	1/29/37	20.00
Walton	1/26-7/37	37.50	—		—		—		—	
Wayne Ave.	12/11-2/36	50.00	8/20-1/37	35.00	3/12-13/37	50.00	4/16-7/37	35.00	1/1-2/37	40.00
West Allegheny	12/17-9/36	110.00	8/26-8/37	85.00	3/18-20/37	110.00	4/22-4/37	80.00	1/7-9/37	90.00
							(Rep)		11-27-38	12.50

Page 18

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount).

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

(95)

PHILADELPHIA

THEATRE	DOUGLASTOWN PLAYDATES	RENTAL	[illegible] PLAYDATES	RENTAL	[illegible] PLAYDATES	RENTAL	YOU ONLY LIVE ONCE PLAYDATES	RENTAL	GAY DESPERADO PLAYDATES	RENTAL
Windsor	12/25-2/36	45.00	9/7/37	30.00	[illegible]	40.00	5/6-/37	25.00	1/14/37	25.00
Wissahickon	12/8-2/36	30.00	6/15-[illegible]/37	25.00	[illegible]	30.00	5/5-7/37	20.00	1/7-8/37	20.00
York-Palace	12/30-1/36	25.00	9/10-4/37	30.00	[illegible]	25.00	5/7-8/37	17.50	1/16-8/37	20.00
Douglas	--		—		—		5/30-1/37	17.50	—	
	TOTALS.. ..	$4055.63		$3436.54		$4247.00		$3054.74		$4020.28

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

[illegible] STATES MAP

[illegible] & TYPE	[illegible]	RENTAL
Paradise, N.Y.C.	7/1-7/31	1
Valencia, Jamaica, L.I.	7/1-7	1
State, N.Y.C.	7/1-7	1
83rd St., N.Y.C.	7/1-7	1
125th St.,N.Y.C.	7/1-7	1
Lexington,N.Y.C.	7/1-7	1
72nd St., N.Y.C.	7/1-7	1
Ziegfeld, N.Y.C.	7/1-7	1
Paramount,Stapleton S.I.	7/1-6	1
Commodore,N.Y.C.	7/6-11	1
Delancey, N.Y.C.	7/6-11	1
Sheridan, N.Y.C.	7/6-11	1
Tribeca, Astoria, L.I.	7/6-11	1
Fifth, Bklyn.	7/6-12	1
Orpheum, N.Y.C.	7/6-11	1
Lilith St.,N.Y.C.	7/6-11	1
Victoria, N.Y.C.	7/6-11	1
Kings, Bklyn.	7/6-11	1
42nd St., N.Y.C.	7/9-11	1
Rio, N.Y.C.	7/12-13	1
Inwood, N.Y.C.	7/12-13	1
Lincoln, N.Y.C.	7/13-18	1
Boulevard, N.Y.C.	7/13-18	1
Grand, N.Y.C.	7/13-18	1
Belmont, N.Y.C.	7/13-18	1
145th St., N.Y.C.	7/13-18	1
Dorchester, N.Y.C.	7/13-18	1
Boulevard, N.Y.C.	7/13-18	1
National , N.Y.C.	7/13-18	1
Goodwin, Goodwin, L.I.	7/13-18	1
Willard, Richmond Hill,L.I.	7/13-18	1
Prospect, Flushing, L.I.	7/13-18	1
Plaza, Queens, L.I.	7/13-18	1
Hillside, Jamaica, L.I.	7/13-18	1
Alpine, Bklyn.	7/13-18	1
86th St.,Bklyn.	7/13-18	1
Oriental, Bklyn.	7/13-18	1
Coney Island, Bklyn.	7/13-18	1
Broadway, Bklyn.	7/13-18	1
Premier, Bklyn.	7/13-18	1
Quigo, Bklyn.	7/13-18	1
Bedford, Bklyn.	7/13-18	1
Lenox, Bklyn.	7/13-17	1
Mayfair, N.Y.C.	7/14-18	1
Dix, Ft.Richmond, S.I.	7/17-20	1
Canal, N.Y.C.	7/19-20	1

[illegible] STATES MAP. Page 2

[illegible] & TYPE	[illegible]	RENTAL
Mills, Bklyn.	[illegible]	1
Tilden, N.Y.C.	[illegible]	155.00
Tollgrove, N.Y.C.	[illegible]	1
Strand, Far Rockaway, L.I.	[illegible]	0.00
Capitol, W.Brighton, S.I.	[illegible]	75.00
86th St., N.Y.C.	[illegible]	1
Liberty, Stapleton, S.I.	[illegible]	1
Jefferson, N.Y.C.	[illegible]	0.00
Spooner, N.Y.C.	[illegible]	1
Astoria, Astoria, L.I.	[illegible]	1
Lafferts, Bklyn.	[illegible]	1
Regidor, Bklyn.	[illegible]	1
Valentine, N.Y.C.	[illegible]	215.00
Victory, N.Y.C.	[illegible]	1
Bloomers, N.Y.C.	[illegible]	1
Republic, Bklyn.	[illegible]	1
Colonial, Bklyn.	[illegible]	1
Commodore,Bklyn.	[illegible]	1
Alma, Bklyn.	[illegible]	1
Palace, Bklyn.	[illegible]	1
Hamrick,Bklyn.	[illegible]	1
Bestwy,Bklyn.	[illegible]	1
Forest Hills, Forest Hills,L.I.	[illegible]	50.00
Shore Road, Bklyn.	[illegible]	275.00
Avalon, Bklyn.	[illegible]	1
Riverside, Bklyn.	[illegible]	1
Stadium, Tottenville, S.I.	[illegible]	1
Boston Road, N.Y.C.	6/[illegible]	1
Brevoort, Bklyn.	6/[illegible]	1
Park, Rockaway P[illegible]	6/[illegible]	1.00
Ogden, N.Y.C.	6/[illegible]	107.50
Carlton, Bklyn.	6/[illegible]	1
Baker, Bklyn.	6/[illegible]	1
Harbors, Bklyn.	6/[illegible]	1
Jackson, Jackson Hts.,L.I.	6/[illegible]	0.00
Cross Bay,Ozone Park, L.I.	6/[illegible]	1
Bigwood, Bklyn.	6/[illegible]	C
Duffield,Bklyn.	6/[illegible]	1
Boulevard, Jackson Hts.,L.I.	6/7-13	1.00
Riverside, N.Y.C.	6/7-9	50.00
Ambassador, Bklyn.	6/13-11	1
Sigma, Bklyn.	6/13-11	1

[illegible] STATES MAP. Page 3

[illegible] & TYPE	[illegible]	RENTAL
Congress, Bklyn.	6/13-11	1
Rio, Bklyn.	6/13-12	0
Farrell, Bklyn.	6/13-12	1
Mayfair, Bklyn.	6/13-12	0
Lester , Bklyn.	6/13-12	1
Doreen , Doreen, L.I.	6/13-12	55.00
Parthenon, Bklyn.	6/11-13	1
Embassy, Bklyn.	6/11-12	1
Park, Bklyn.	6/11-12	250.00
Tuxedo, Bklyn.	6/11-13	0
Walford, Bklyn.	2/12-13	1
Alhambra, Bklyn.	6/12-13	1
Highway, Bklyn.	6/12-13	1
Nichols, N.Y.C.	6/13-16	100.00
Silver, Bklyn.	6/13-17	1
Milton[illegible] Bklyn.	6/13-17	1
Gloucester, Bklyn.	6/13-19	1
Haspeth, Haspeth, L.I.	6/11-20	1
Beverly, Bklyn.	6/14-20	1
Tegner, Bklyn.	6/21-23	0
Riviera, Bklyn.	6/22-23	50
Crescent, Astoria, L.I.	6/22-26	50.00
Dreamland, Bayside, L.I.	6/24-26	50.00
Triangle, Bklyn.	6/27-30	0
Parkside, Bklyn.	6/28-30	0
Bay Ridge, Bay Ridge, L.I.	9/5-7	1
Tottenville, N.Y.C.	10/13-21	100.00
Midtown, N.Y.C.	1/6-2/50	50.00
1 INDICATES LOEWS BLANKET CONTRACT		31,530.35
2 " RKO THEATRICAL BLANKET CONTRACT		1,950.00
	TOTAL	33,410.83

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

DELUXE RENT		
THEATRE & TOWN	DATE	RENTAL
L. METROPOLITAN, BOSTON, MASS.	2/5-11/1937	$
L. PARADISE, NEW YORK CITY	2/11-17	
L. VARSITY, JAMAICA	2/11-17	
L. STATE, NEW YORK CITY	2/11-17	
L. 83rd ST. "	2/11-17	
L. 175TH ST. "	2/11-17	
L. LEXINGTON "	2/11-17	
L. 72nd ST. "	2/11-17	
L. SUBURBAN "	2/11-17	
L. GRANADA "	2/16-21	
L. TRIBORO, ASTORIA	2/16-21	
L. CAPITOL, NEW YORK CITY	2/16-21	
L. 116th ST. "	2/16-21	
L. VICTORIA "	2/16-21	
L. PLAZA, BOSTON, MASS.	2/17-21	
L. ELMO "	2/18-21	
L. IRVING, NEW YORK CITY	2/18-21	
L. RIO "	2/18-21	
L. COMMODORE "	2/18-21	
L. DELANCEY "	2/18-21	
PARAMOUNT, STAPLETON, S.I.	2/20-21	
L. BOULEVARD, NEW YORK CITY	2/25-28	
L. GRAND "	2/25-28	
L. 167th ST. "	2/25-28	
L. FAIRMONT "	2/25-28	
L. LESTER "	2/25-28	
L. PINELAND "	2/25-28	
L. NATIONAL "	2/25-28	
L. WINDSOR "	2/25-28	
L. WOODSIDE, WOODSIDE	2/25-28	
L. WILLARD, *RICHMOND HILL	2/25-28	
L. PROSPECT, FLUSHING	2/25-28	
L. PLAZA, GEORGIA	2/25-28	
L. WILLIAMS, JAMAICA	2/25-27	
L. ALPINE, BOSTON, MASS.	2/25-28	
L. 86th ST. "	2/25-28	
L. ORIENTAL "	2/25-28	
L. OCEAN ISLAND "	2/25-28	
L. BROADWAY, BOSTON, MASS.	2/25-28	
L. DAVIS "	2/25-28	
L. PREMIER "	2/25-28	
L. SEINFELD "	2/25-28	
L. LAVEE "	2/25-28	
L. SPOONER, NEW YORK CITY	3/1-5	
L. KELBA, BOSTON, MASS.	3/4-7	
IRVING, NEW YORK CITY	3/4-7	104.00
L. HOLLYWOOD "	3/4-7	
JEFFERSON "	3/4-7	375.00
L. 86TH ST. "	3/6-8	
L. ASTORIA, ASTORIA	3/10-11	
L. VICTORY, NEW YORK CITY	3/10-11	

[illegible] RENT		
THEATRE & TOWN	DATE	RENTAL
L. [illegible], NEW YORK CITY	[illegible]	
FOREST HILLS, FOREST HILLS	[illegible]	[illegible]
[illegible], [illegible]	[illegible]	
[illegible] DAY, [illegible]	[illegible]	
[illegible], [illegible]	[illegible]	
[illegible] "	[illegible]	
[illegible], P. R. [illegible]	[illegible]	
L. PALACE, [illegible]	[illegible]	
L. [illegible] "	[illegible]	
L. [illegible] ST. "	[illegible]	
L. [illegible] "	[illegible]	
AVALON "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
L. [illegible] ST. "	[illegible]	
L. [illegible], NEW YORK CITY	[illegible]	
WARNER, [illegible]	[illegible]	
[illegible] "	[illegible]	
[illegible], JAMAICA [illegible]	[illegible]	
VALENTINE, NEW YORK CITY	[illegible]	75.00
"	[illegible]	375.00
SALEM, [illegible]	[illegible]	375.00
L. RIO PARK, [illegible]	[illegible]	
[illegible], [illegible]	[illegible]	
ALBA, [illegible]	[illegible]	
PARK, RICHMOND PARK	[illegible]	
HELEN MAR, [illegible]	[illegible]	375.00
[illegible], [illegible]	[illegible]	
[illegible], [illegible]	[illegible]	
ALPHA, [illegible]	[illegible]	
[illegible] "	[illegible]	
L. [illegible], NEW YORK CITY	[illegible]	60.00
PARKWAY, [illegible]	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible], JAMAICA	[illegible]	75.00
[illegible], [illegible]	[illegible]	
[illegible] "	[illegible]	
[illegible], [illegible]	[illegible]	37.50
MAYFAIR, [illegible]	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	
[illegible] "	[illegible]	

DELUXE RENT		
THEATRE & TOWN	DATE	RENTAL
ALHAMBRA (BEVERLY AVE.) BOSTON, MASS.	2/20-21/1937	$
[illegible], [illegible]	2/21-[illegible]	
ELM "	4/1-[illegible]	
ALHAMBRA "	4/1-2	
[illegible] "	4/1-2	
PARK "	4/2-3	300.00
MAJOR "	4/3-5	
GRANADA, GEORGIA	4/3-6	85.00
NANCY, BOSTON, MASS.	4/6-7	
CAPITOL "	4/6-7	
VICTORIA, NEW YORK CITY	4/6-8	300.00
STATION, TUCKERVILLE	5/1-4	
NEW ELMO, NEW ELMO	5/16-18	
MONROE, NEW YORK CITY	6/1-2/1938	85.00
1 INDICATES LOEW BLANKET CONTRACT		38,390.96
1 " ELLIS THEATRICAL BLANKET CONTRACT		2,000.00
	TOTAL	40,016.96

P. 39

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

"SCHEDULE"

THEATRE & TOWN	DATE	RENTAL
[illegible], N. Y. C.	10/29-11/2/1936	$
K[illegible], BROOKLYN	10/30-11/	
[illegible], N. Y. C.	"	
[illegible], JAMAICA	"	
[illegible], N. Y. C.	"	
[illegible]	10/30-11/2	
[illegible]	"	
[illegible]	"	
[illegible]	"	
[illegible], BROOKLYN	10/31-11/	
[illegible], N. Y. C.	11/1-2	
[illegible]	11/1-3	
[illegible], N. Y. C.	11/1-2	
[illegible]	11/1-10	
[illegible]	11/1-2	
[illegible]	"	
[illegible]	11/1-2	
[illegible]	11/1-2	
[illegible], BROOKLYN	"	
[illegible]	"	
[illegible], N. Y. C.	11/1-2	
[illegible]	11/1-17	
[illegible]	"	
[illegible]	"	
[illegible]	"	
[illegible]	11/11-15	
[illegible]	11/11-17	
[illegible]	"	
[illegible], RICHMOND HILL	"	
[illegible], FLUSHING	"	
[illegible]	"	
[illegible], BROOKLYN	"	
[illegible]	"	
[illegible]	"	
[illegible] ISLAND, BROOKLYN	"	
[illegible]	"	
[illegible], BROOKLYN	"	
[illegible]	"	
[illegible]	"	
[illegible]	"	
[illegible], JAMAICA	11/15-17	
[illegible], N. Y. C.	11/15-17	200.00
[illegible]	11/16-17	
[illegible]	"	

"SCHEDULE" - (PAGE 2)

THEATRE & TOWN	DATE	RENTAL
[illegible], N. Y. C.	11/20-27/1936	$
JEFFERSON,	11/20-27	375.00
[illegible] ST.,	11/21-27	
HILL, FOREST HILLS	11/21-26	
ASTORIA, ASTORIA	11/24-26	
[illegible], N. Y. C.	11/24-25	
GLORIA, BAY RIDGE	11/25-12/1	750.00
FOREST HILLS, FOREST HILLS	11/26-28	175.00
RAVENEL, BROOKLYN	11/26-30	
[illegible],	11/26-29	
[illegible],	"	
[illegible],	11/27-30	
[illegible],	11/27-28	
[illegible],	11/27-30	
[illegible],	11/27-30	
[illegible],	11/28-12/1	
[illegible],	"	
[illegible],	"	
[illegible],	"	
[illegible],	11/28-30	
[illegible],	"	175.00
[illegible],	11/30-12/1	
[illegible], BROOKLYN	12/1-3	
[illegible],	"	
[illegible],	12/2-3	
[illegible],	12/2-7	400.00
[illegible],	12/3-4	
[illegible],	12/3-5	
[illegible],	"	
[illegible],	12/4-10	
[illegible],	12/4-7	
[illegible],	12/4-8	
[illegible],	12/4-7	
[illegible],	"	60.00
[illegible],	12/5-9	
[illegible],	12/6-8	350.00
[illegible],	12/8-9	
[illegible],	12/8-11	
[illegible],	12/10-12	
[illegible],	12/11-14	
[illegible],	12/12-14	
[illegible],	"	
[illegible],	12/12-15	
[illegible],	12/12-14	
[illegible],	12/12-15	
[illegible],	12/12-14	
[illegible],	12/13-15	
[illegible],	"	
[illegible],	12/14-16	

"SCHEDULE" - (PAGE 3)

THEATRE & TOWN	DATE	RENTAL
CHESTNUT, ASTORIA	12/13-16/1936	$7.50
TUDOR, BROOKLYN	"	
BEVERLY,	12/13-22	
[illegible], BROOKLYN	"	
LIBERTY, STAPLETON	12/13-22	
RIVERA, BROOKLYN	12/20-22	
CAPITOL,	12/22-23	
TRIANGLE,	1/13-15/1937	
TOMPKINS, N. Y. C.	1/24-28	300.00
STRAND, GREAT KILLS	1/30-2/2	
NEW ROMP, NEW ROMP	1/31-2/2	
ELK, BROOKLYN	2/1-2	
TUDOR,	2/6-10	
KINGSTOWN, N. Y. C.	2/24-2/2/1938	50.00
ROSSELLE,	2/3-15/1939	62.50
LEFFERTS, BROOKLYN	7/6	50.00
[illegible],	"	50.00
TUDOR,	12/13-16	25.00

"S" INDICATES LOEW'S BLANKET CONTRACT $60,522.52

"I" " ISLE THEATRICAL BLANKET CONTRACT 2,500.00

TOTAL $63,490.02

P.3K

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

[illegible] CLEARANCE

[illegible] & TOWN	CLEARANCE	[illegible]
[illegible] Hall, N.Y.C.	8/10-12/37	12,[illegible].00
Plaza, N.Y.C.	7/19-21	[illegible].00
Lane, N.Y.C.	7[illegible]	[illegible].00
34th St., N.Y.C.	7/[illegible]	[illegible].00
Harlem Grand, N.Y.C.	7/[illegible]	175.00
[illegible], N.Y.C.	7/[illegible]	100.00
Regan, N.Y.C.	7/[illegible]	[illegible].00
Tuxedo, N.Y.C.	7/23-27	100.00
Marblehill, N.Y.C.	7/[illegible]	50
Jos.M.Cohan, N.Y.C.	7/[illegible]	[illegible].00
Harris, N.Y.C.	7/[illegible]	800.00
5th St.Playhouse,N.Y.C.	7/[illegible]	[illegible].00
Earle, N.Y.C.	7/[illegible]	[illegible].00
Luxor, N.Y.C.	7/27-28	75.00
Queens, Queens Village, L.I.	7/28-30	C
Grand Opera, N.Y.C.	7/28-30	[illegible].00
Allerton, N.Y.C.	7/[illegible]	50
Arcadia, N.Y.C.	7/30-8/1	75.00
St. Ives, N.Y.C.	7/30-8/2	[illegible].00
Delba, N.Y.C.	7/30-8/2	SC
Miles, Long Island City	7/30-8/2	137.50
Ridgewood, Bklyn.	7/30-8/3	A
Savoy, Jamaica, L.I.	7/31-8/2	150.00
Wakefield, N.Y.C.	7/31-8/2	SC
Palace, N.Y.C.	7/31-8/2	[illegible].00
Lacasia, N.Y.C.	7/31-8/2	50
Bilson, Bklyn.	8/1-2	A
Kismet, Bklyn.	8/1-3	100.00
Venice, N.Y.C.	8/3	[illegible].00
Kent, N.Y.C.	8/3-4	[illegible].00
Stoddard, N.Y.C.	8/3-5	50
Palestine,N.Y.C.	8/3-4	75.00
Riverside, N.Y.C.	8/3-5	312.50
Venoy N.Y.C.	8/3-5	250.00
Boro Park, Bklyn.	8/[illegible]	L
Beacon, N.Y.C.	8/[illegible]	SC
Pivoli, Bklyn.	8/[illegible]	A
Hudson [illegible], N.Y.C.	8/[illegible]	[illegible].00
Superior, N.Y.C.	8/[illegible]	[illegible].00
New Amsterdam,N.Y.C.	8/[illegible]	[illegible]
Roosevelt, Flushing, L.I.	8/[illegible]	50.00
Congress, N.Y.C.	8/[illegible]	75.00
Marine, Bklyn.	8/[illegible]	[illegible]
New Delancey, N.Y.C.	8/[illegible]	75.00
Sumner, Bklyn.	8/[illegible]	35.00

[illegible] MAST, Page 12

[illegible] & TOWN	CLEARANCE	[illegible]
Prospect, N.Y.C.	8/[illegible]	[illegible]
Cresna, Bklyn.	8/[illegible]	300.00
Marlton, N.Y.C.	8/[illegible]	C
Heights, N.Y.C.	8/[illegible]	SC
Alpine, N.Y.C.	8/7-8	SC
Bellaire, Bellaire,L.I.	8/7-8	SC
Wheatley, N.Y.C.	8/7-8	P
DeLuxe, N.Y.C.	8/8-10	75.00
College, College Pt.,L.I.	8/8-10	81.25
Tegue, N.Y.C.	8/8-9	75.00
Tudor, N.Y.C.	8/8-9	75.00
Fleetwood, N.Y.C.	8/8-10	B
City, N.Y.C.	8/9-10	75.00
Chelsea, N.Y.C.	8/10	100.00
Sheepshead, Bklyn.	8/10-12	30.00
Lily, N.Y.C.	8/10-11	C
Austin, Kew Gardens,L.I.	8/10-12	35.00
Luxor, N.Y.C.	8/10-11	50.00
Forum, N.Y.C.	8/10-11	30.00
Isweet, Bklyn.	8/10-12	200.00
Avalon, N.Y.C.	8/10-11	B
Capers, N.Y.C.	8/10-11	50.00
Savoy, N.Y.C.	8/11-12	50.00
Coliseum, Bklyn.	8/11-12	50.00
Claridge, Bklyn.	8/11-13	100.00
Carlo, Bklyn.	8/11-13	A
Garden, Springfield Gar.,L.I.	8/11-12	A
Follis, Hollis, L.I.	8/11-12	P
Craft, N.Y.C.	8/11-12	P
Community, Queens Village,L.I.	8/11-12	27.50
St.George, Bklyn.	/11-12	C
Roosevelt, Bklyn.	8/11	SC
Surf, Bklyn.	8/12-14	B
Monroe, N.Y.C.	8/12-14	C
Regent,3rd Ave., N.Y.C.	8/12	1[illegible]
Belham, N.Y.C.	8/12-13	[illegible]
Yorke, N.Y.C.	8/1[illegible]-13	[illegible]
Parklane, N.Y.C.	8/12-14	[illegible]
Island, Hollis, L.I.	8/12-14	1
Colony, Rockaway Pt.,L.I.	8/12-14	[illegible]
Linden, St. Albans, L.I.	8/12-14	[illegible]
Kingsbridge, N.Y.C.	8/12-13	[illegible]
State, Bklyn.	8/13-14	[illegible]
National, Bklyn.	8/13-14	1
Corona, N.Y.C.	8/13-14	[illegible]

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

WOMAN CHASES MAN, Page #3

THEATRE & TOWN	PLAYDATES	RENTAL
Patio, Bklyn.	8/13-16	C
Park, So.Ocean Park, L.I.	8/13-14	P
Thalia, N.Y.C.	8/13-16	SC
Terminal, Bklyn.	8/13-14	B
Taft, Flushing, L.I.	8/13-14	40.00
State, So.Ocean Park,L.I.	8/13-14	P
Cox, Far Rockaway, L.I.	8/13-14	B
Arden, N.Y.C.	8/14-17	SC
Eagle, N.Y.C.	8/14-16	100.00
Tribune, N.Y.C.	8/14-17	75.00
Senate, Bklyn.	8/13-16	B
Zox, Rockaway, L.I.	8/14-16	75.00
Crest, N.Y.C.	8/14-16	50.00
Freeman, N.Y.C.	8/15-17	100.00
Raymond, City Island	8/15-16	20.00
Metro, N.Y.C.	8/15-16	100.00
Zenith, N.Y.C.	8/15-17	30.00
Bijou, N.Y.C.	8/15-16	35.00
Sanders, Bklyn.	8/15-17	B
Ritz, N.Y.C.	8/17-19	B
Howard, Howard Beach,L.I.	8/17-18	20.00
Earle, Bklyn.	8/17-18	50.00
Alden, N.Y.C.	8/17-18	B
Boardwalk, Rockaway Pk.,L.I.	8/17-18	75.00
Rivoli, Rockaway,L.I.	8/14-19	SEE REV 8/14-16
Pilgrim, N.Y.C.	8/18-20	SC
Square, N.Y.C.	8/18-20	SC
Castlehill, N.Y.C.	8/18-20	SC
Interboro, N.Y.C.	8/18-20	SC
Ward, N.Y.C.	8/18-19	SC
Rosedale, N.Y.C.	8/18-19	SC
Fortway, Bklyn.	8/18-19	125.00
Canarsie, Bklyn.	8/18-19	85.00
Fenway, N.Y.C.	8/19-21	93.75
Tower, N.Y.C.	8/19-21	81.25
Farragut, Bklyn.	8/20-23	C
Ave. U., Bklyn.	8/20-21	C
Albemarle, Bklyn.	8/20-23	B
Stillwell, Bklyn.	8/20-21	B
Sutton Cinema, N.Y.C.	8/21-23	50.00
Kelsey, Bklyn.	8/22-23	B
Garfield, Bklyn.	8/22-23	B
Little Neck, Little Neck,L.I.	8/22-24	75.00
Granada, N.Y.C.	8/22-24	35.00
St.Albans, St.Albans, L.I.	8/22-24	60.00

WOMAN CHASES MAN, Page #4

THEATRE & TOWN	PLAYDATES	RENTAL
Utica, Bklyn.	8/22-23	B
Carlton, Jamaica,L.I.	8/22-23	B
Colony, 73th St.,N.Y.C.	8/22-23	B
Bayside, Bayside, L.I.	8/22-24	B
Coast, Bklyn.	8/22-24	35.00
16th St., Bklyn.	8/22-24	B
Berkshire, Bklyn.	8/24-25	75.00
Lido, N.Y.C.	8/24-26	30.00
Renaissance, N.Y.C.	8/24-26	200.00
Radicott, Bklyn.	8/25-26	80.00
Avon, Bklyn.	8/26-27	B
Photoplay, N.Y.C.	8/26-27	25.00
Gold, Bklyn.	8/26-27	25.00
Farrell, So.Richmond Hill.	8/26-27	25.00
Orpheum, 2nd Ave., N.Y.C.	8/26-27	50.00
American Movies, N.Y.C.	8/27-28	25.00
Empress, N.Y.C.	8/27-29	40.00
Manhattan, N.Y.C.	8/28-30	50.00
Art, N.Y.C.	8/28-30	65.00
Windsor, N.Y.C.	8/28-30	B
Mozart, Bklyn.	8/28-30	SC
Dover, N.Y.C.	8/29-31	40.00
Waldorf, N.Y.C.	8/29-30	B
Willoughby, Bklyn.	8/29-31	B
Rivoli, Bklyn.	8/29-30	B
Sunset, N.Y.C.	8/30-9/1	140.00
Rugby, Bklyn.	8/31-9/1	C
Empress, Bklyn.	8/31-9/1	B
Vernon, Long Island City	8/31-9/1	30.00
Empire, Bklyn.	8/31-9/2	B
Isle Moor, Long Island City	8/31-9/2	40.00
Windsor, Bklyn.	9/1-2	B
Elton, Bklyn.	9/1-2	B
Alto, Bklyn.	9/1-2	75.00
Lincoln, N.Y.C.	9/1-2	100.00
Harbor, Bklyn.	9/1-2	60.00
Howard, Bklyn.	9/1-2	40.00
Granada, Bklyn.	9/1-2	C
Sun, Bklyn.	9/2-3	35.00
Grandview, Bklyn.	9/3-4	25.00
Arion, Middle Village,L.I.	9/3-4	B
Drake, Rego Park, L.I.	9/3-4	40.00
Majestic, Bklyn.	9/3-4	25.00
Belvedere, Bklyn.	9/3-4	60.00
Arcade, N.Y.C.	9/4-5	25.00
Jerome, Bklyn.	9/4-6	25.00
Grand, Bklyn.	9/4-6	80
Newton, Elmhurst, L.I.	9/5-7	50.00
Lincoln, Bklyn.	9/5-7	50.00

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

ROMAN CHARIOT MAP, Page #5

THEATRE & TOWN	PLAYDATES	RENTAL
Kitano, Astoria, L.I.	9/5-7	40.00
Colony, Jackson Hgts, L.I.	9/7-8	"
Ave. B, Bklyn.	9/7-8	"
Republic, Bklyn.	9/7-8	30.00
Hollywood, Bklyn.	9/8-9	30.00
Lauralton, Lauralton, L.I.	9/8-9	75.00
Plaza, Flatbush Ave., Bklyn	9/9-10	30.00
Grand, N.Y.C.	9/10-11	"
North, Woodhaven, L.I.	9/10-11	30.00
Tiffany, N.Y.C.	9/10-11	30.00
Rogers, Rogers Ave., Bklyn.	9/10-11	30.00
Rheem, Rheem Ave., Bklyn.	9/10-11	52.50
Fenwood, N.Y.C.	9/12-13	30.00
Columbia, N.Y.C.	9/12-13	80.00
Audubon, N.Y.C.	9/14-15	"
Delancy, N.Y.C.	9/14-15	175.00
New 14th St., N.Y.C.	9/15-16	80.00
Springside, N.Y.C.	9/16-17	30.00
Metro, Bklyn.	9/16-17	40.00
Peerless, Myrtle Ave., Bklyn.	9/16-17	25.00
Ritter, Bklyn.	9/16-17	"
Rital, Bklyn.	9/17-18	20.00
Rivoli, Bklyn.	9/17-18	25.00
Bell Classic, Bklyn.	9/19-21	32.50
Dewitt, N.Y.C.	9/19-20	25.00
Oceana, Carrison Beach, Bklyn.	9/19-20	20.00
Dorset, N.Y.C.	9/21-23	100.00
Palace, Corona, L.I.	9/23-24	30.00
Flatbush, Bklyn.	9/23-24	"
Dream, N.Y.C.	9/25-26	140.00
Electra, Bklyn.	9/25-26	"
University, N.Y.C.	9/25-30	25.00
Empress, Bklyn.	9/29-30	"
Albert, Rockville, L.I.	9/29-30	30.00
Granada, Bklyn.	9/30-10/1	35.00
Huron, N.Y.C.	10/1-2	15.00
Venus, Bklyn.	10/1-2	30.00
Washington, N.Y.C.	10/1-2	140.00
Harrison, Harrison, Bklyn.	10/5-6	30.00
Rialto, Whitestone, L.I.	10/12-13	30.00
Bixby, Bklyn.	10/12-13	20.00
Sunset, Bklyn.	10/13-14	35.00
Trinity, Bklyn.	10/13-14	35.00
Wilson, N.Y.C.	10/14-15	50.00
Criterion, N.Y.C.	10/14	75.00
Reserve, Bklyn.	10/14-15	25.00
Premier, Bklyn.	10/19-20	20.00
Monroe, Bklyn.	10/19-20	25.00

ROMAN CHARIOT MAP, Page #6

THEATRE & TOWN	PLAYDATES	RENTAL
Osceola, N.Y.C.	10/20	15.00
Royal, 10th Ave., N.Y.C.	10/20	30.00
Stanley, Bklyn.	10/22-23	30.00
Central, N.Y.C.	10/22-23	80.00
Lido, Bklyn.	10/22-23	75.00
Happy Hour, Bklyn.	10/28-29	35.00
Vanity, N.Y.C.	10/28	"
Metro, 20th Ave., Bklyn.	10/29-30	25.00
Adelphi, Bklyn.	10/29-30	30.00
Village, N.Y.C.	11/5	20.00
Bridge, N.Y.C.	11/5-6	17.50
Madison, 102nd St., N.Y.C.	11/11-12	20.00
Art, Bklyn.	11/12-13	25.00
New Yorker, N.Y.	11/12-13	25.00
Livonia, Bklyn.	11/12-13	25.00
Trans Art, Bklyn.	11/16-17	25.00
Acme, Bklyn.	11/16-17	17.50
Apollo, Bklyn.	11/16-17	80
Paradise, Bklyn.	11/17-18	40.00
Melrose, N.Y.C.	11/18-19	20.00
Minerva, Bklyn.	11/23-24	25.00
Newkirk, Bklyn.	11/26-27	20.00
Major, N.Y.C.	12/1-2	20.00
Glenwood, Flat.Ave., Bklyn.	12/7-8	25.00
Bore, N.Y.C.	12/7-8	12.50
Wallacks, N.Y.C.	12/9-12	75.00
York, 1st Ave., N.Y.C.	12/14-15	25.00
Pioneer, Bklyn.	12/16-17	32.50
Wyckoff, Bklyn.	12/21-23	"
Lyric, Bklyn.	1/4-5/38	30.00
Classic, Bklyn.	1/5-6	25.00
Eagle, Bklyn.	1/5-6	20.00
Stadium, N.Y.C.	1/12-13	20.00
Fisk, Winfield, L.I.	1/14-15	25.00
Bore Hall, Bklyn.	1/20-21	35.00
Progress, N.Y.C.	1/25-26	12.50
Mardi Gras, Bklyn.	1/26-27	15.00
Cumberland, Bklyn.	1/27-28	30.00
Municipal, N.Y.C.	2/1-2	12.50
Williamsburg, Bklyn.	2/1-2	15.00
Gramercy, N.Y.C.	2/3-4	25.00
Plaza, So.Jamaica, L.I.	3/8-9	25.00
Center, Bklyn.	3/23-24	15.00
Lucky Star, N.Y.C.	3/31-4/1	20.00
Lenox, N.Y.C.	3/31-4/1	15.00
Grace, Bklyn.	3/31-4/1	20.00
Rose, N.Y.C.	4/2	17.50
Comet Star, N.Y.C.	4/14	12.50
Leo, N.Y.C.	4/28-29	12.50
Universal, N.Y.C.	5/11	25.00

P. 46

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

[illegible] Page 47

	PLAYDATES	RENTAL
[illegible] Loew United, Kilyn.	5/26-27	15.00
Devon, N.Y.C.	7/21	15.00
Kilyn, N.Y.C.	8/15	50.00
Square, Kilyn.	10/15	15.00
Knights, N.Y.C.	11/29-12/1	35.00
Dover, N.Y.C.	1/4-5/39	17.50
Regent, Kilyn.	1/27-28	20.00
Tremont, N.Y.C.	3/1-2	25.00
Sutton, N.Y.C.	3/14-15	25.00
West End, N.Y.C.	3/29-30	15.00
Lenox, Kilyn	4/16-17	15.00
Jefferson, Kilyn.	7/14-15	17.50
Tivoli, N.Y.C.	9/6-7	50.00
Alden, N.Y.C.	10/1-2	25.00
University, N.Y.C.	12/2-3	17.50

"B"	RKO-[illegible] BRANDT BLANKET CONTRACT	1,480.00
"BC"	" SPITZER & COCALIS BLANKET CONTRACT	2,775.25
"C"	" CENTURY BLANKET CONTRACT	3,155.00
"E"	" [illegible]FORCE " "	5,050.00
"P"	" PRUDENTIAL " "	269.60
	TOTAL	37,806.90

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

"DEISWORTH"

THEATRE & TOWN	DATE	RENTAL
RIVOLI, N. Y. C.	5/23-10/27/1936	43,415.05
NEW PLAZA, "	11/16-18	250.00
ROOSEVELT, "	11/17-20	350.00
HARLEM OPERA HOUSE, N. Y. C.	"	125.00
LANE, N. Y. C.	11/19-25	SC
2GTEAM(DELMAR), N. Y. C.	11/21-25	500.00
SUNSET, N. Y. C.	11/21-23	150.00
ALPINE, "	"	SC
MARBLEHILL, "	"	SC
CENTRAL, "	11/21-24	500.00
HARLEM GRAND, "	"	250.00
8TH ST. PLAYHOUSE, N. Y. C.	11/21-23	135.00
TUDOR, N. Y. C.	11/22-24	B
LINDEN, "	"	125.00
34TH ST., "	11/22-23	40.00
STODDARD, "	11/23-26	SC
REMO, "	"	325.00
RIVERSIDE, "	"	425.00
LUXOR, "	11/24-25	100.00
EARLE, "	11/24-26	80.00
UNIVERSITY, "	"	100.00
WALDORF, "	"	B
LIBERTY, "	11/24-12/2	500.00
BEACON, "	11/24-26	SC
RIDGEWOOD, BROOKLYN	11/26-30	B
CLINTON, N. Y. C.	11/26-27	65.00
AVALON, "	"	65.00
ROOSEVELT, FLUSHING	11/26-29	55.00
COLUMBIA, N. Y. C.	"	85.00
CONCOURSE, "	11/26-30	250.00
REPUBLIC, "	11/26-30	B
HEIGHTS, "	"	SC
HELBA, "	11/27-30	SC
TUXEDO, "	"	175.00
MT. EDEN, "	"	225.00
SUPERIOR, "	11/27	60.00
ALLERTON, "	11/27-30	SC
JEWEL, "	11/28-12/1	150.00
GRAND OPERA HOUSE, N. Y. C.	"	350.00
SAVOY, JAMAICA	11/28-30	700.00
MAKEFIELD, N. Y. C.	"	SC
LACONIA, "	"	SC
CASTLE HILL, "	"	SC
JEFFERSON, "	"	SC
PILGRIM, "	"	SC
SQUARE, "	"	SC
KINGSBRIDGE, "	"	175.00
ARCADIA, "	11/28-12/1	175.00

"DEISWORTH"(PAGE 2)

THEATRE & TOWN	DATE	RENTAL
WASHINGTON, N. Y. C.	11/29-12/2/1936	150.00
PARK, "	11/29-12/1	B
CAPITOL, "	11/29-12/1	100.00
HEALOTTE, "	11/29-30	100.00
REGENT(3rd), "	12/1-2	30.00
KENT, "	12/1-3	50.00
COLONY, JACKSON HTS.	12/1-5	467.00
ACORN, N. Y. C.	12/1-5	B
DE LUXE, "	"	93.75
QUEENS, QUEEN VILLAGE	12/1-7	C
RIVIERA, N. Y. C.	12/1-10	90.00
PROSPECT, "	12/1-7	350.00
ST. GEORGE, BROOKLYN	"	SC
TIVOLI, "	12/5-6	B
NEW 14TH ST., N. Y. C.	12/5-7	85.00
CITY, "	12/5-6	125.00
FORUM, N. Y. C.	12/5-7	275.00
FULTON, "	12/5-8	SC
YORK, "	"	SC
WARD, "	"	SC
ROSEDALE, "	"	SC
COSMO, "	12/5-7	125.00
BAYSIDE, BAYSIDE	12/6-8	B
PARK LANE, N. Y. C.	"	B
AUSTIN, NEW GARDENS	"	50.00
RENAISSANCE, N. Y. C.	"	75.00
FLEETWOOD, "	"	100.00
BURKE, "	12/8-9	SC
PATIO, BROOKLYN	12/8-10	C
BERKLEY, N. Y. C.	12/9-11	85.00
ROOSEVELT, BROOKLYN	12/9-10	B
LITTLE CARNEGIE, N. Y. C.	12/9-16	125.00
SAVOY(34th), "	12/9-10	60.00
TREMONT, N. Y. C.	12/10-12	B
ST. MARKS, "	12/10-11	B
PALACE(2nd), "	12/11-12	50.00
NASSAU(3 wks.), BROOKLYN	"	62.50
OZIANA, BROOKLYN	12/11-14	C
SUMNER, "	12/11-12	85.00
LIDO, "	"	75.00
ALBEMARLE, "	12/11-14	C
CARIDGE, "	12/12-14	B
OASIS, "	"	B
NEW DELANCEY, N. Y. C.	"	100.00
SENATE, BROOKLYN	"	B
SHERIDAN, "	"	C
PARKWAY, "	12/12-15	C
MARINE, "	"	C

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142. United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

"DODSWORTH" - (PAGE 3)

THEATRE & TOWN	DATE	RENTAL
APOLLO, BROOKLYN	12/13-15/1936	SC
PALESTINE, N. Y. C.	"	100.00
NATIONAL, BROOKLYN	"	B
TERMINAL, "	"	B
IRVWOOD, FOREST HILLS	"	B
FLORENCE, N. Y. C.	"	100.00
RAYWOOD, CITY ISLAND	12/13-14	30.00
SANDERS, BROOKLYN	12/13-15	B
PARK, "	"	300.00
COLISEUM, "	"	100.00
ZAFT, FLUSHING	"	50.00
LITTLE NECK, LITTLE NECK	"	100.00
RIVAL(10th), N. Y. C.	12/13-14	40.00
EMPIRE, BROOKLYN	"	B
ELECTRA, "	12/15-17	B
BELLAIRE, BELLAIRE	"	F
COLLEGE, COLLEGE PT.	12/16-17	100.00
HARBOR, BROOKLYN	"	60.00
FORTWAY, "	"	125.00
CAMARSIE, "	"	85.00
GRANADA, N. Y. C.	12/17-19	50.00
LINCOLN, ST. ALBANS	"	100.00
TOWER, N. Y. C.	"	93.75
FENWAY, "	"	106.25
FREEMAN, "	"	125.00
METRO, BROOKLYN	12/17-18	40.00
ISLAND, HOLLIS	12/17-19	60.00
COMMUNITY, QUEENS VILLAGE	12/17-18	C
STATE, BROOKLYN	12/18-19	125.00
ATLANTIC, "	12/19-21	B
GRAND, "	"	SC
SUTTAR, "	"	B
AVENUE D, "	"	C
RITZ, N. Y. C.	"	100.00
HUGBY, BROOKLYN	"	C
ARDEN, N. Y. C.	12/13-22	SC
RIALTO, BROOKLYN	12/13-21	C
HOLLIS, HOLLIS	12/20-22	F
EKPART, WOODSIDE	"	40.00
BRONX, N. Y. C.	"	150.00
GRANADA, BROOKLYN	"	C
UTICA, "	"	B
PARK, SO. OZONE PARK	"	F
KENYON, KINGSBURY	"	50.00
NEW, ROCKAWAY	"	85.00
GARDEN, SPRINGFIELD GARDENS	"	F

"DODSWORTH" - (PAGE 4)

THEATRE & TOWN	DATE	RENTAL
167H STREET, BROOKLYN	12/22-24/1936	B
TREMONT, N. Y. C.	12/22	B
HALSEY, BROOKLYN	12/22-24	B
BERKSHIRE, "	12/22-23	85.00
DOVER, N. Y. C.	12/23-24	50.00
GARFIELD, BROOKLYN	12/24-26	B
THALIA, N. Y. C.	12/24-28	SC
RUBY, "	12/24-25	50.00
AVON, BROOKLYN	12/24-26	B
AVENUE U, "	"	C
STANLEY, "	12/25-26	35.00
HOLLYWOOD, "	"	65.00
EMPRESS, N. Y. C.	12/25-27	55.00
RIVOLI, ROCKAWAY	12/25-26	SEE 1 " 12/20-22
SUTTON, N. Y. C.	12/26-28	65.00
BIJOU, "	12/25-26	50.00
CITY HALL, "	12/26-28	B
MONARCH, BROOKLYN	"	SC
GARDEN(113th), "	"	100.00
PARKWAY, "	"	50.00
PARKSIDE, "	"	C
STILLWELL, "	12/27-29	B
STATE, SO. OZONE PARK	"	F
DYCKMAN, N. Y. C.	"	40.00
FISK, WINFIELD	"	35.00
DITMARS, ASTORIA	"	50.00
ALDEN, N. Y. C.	12/27-28	B
RIALTO, WHITESTONE	"	35.00
ST. ALBANS, ST. ALBANS	12/27-29	75.00
IMPERIAL, BROOKLYN	12/27-28	B
CARLTON, JAMAICA	"	B
LINCOLN, BROOKLYN	12/27-29	50.00
ARION, MIDDLE VILLAGE	"	B
GLENWOOD(Flatbush), BROOKLYN	12/29-30	52.50
AUDUBON, N. Y. C.	"	B
RIVOLI, BROOKLYN	12/29-31	B
DORSET, N. Y. C.	"	125.00
GROVE, BROOKLYN	12/29-30	25.00
TRAYMORE, "	12/30-31	C
LYRIC, "	12/31-1/1/1937	50.00
LAURELTON, LAURELTON	12/31-1/2	100.00
WINDSOR(Grand), N. Y. C.	12/31-1/2	40.00
EXPRESS, BROOKLYN	12/31-1/1	B
CASINO, "	1/1-3	85.00
GEM, FAR ROCKAWAY	1/1-2	B
MANHATTAN, N. Y. C.	1/2-4	50.00
PLAZA, BROOKLYN	"	50.00

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

"DODSWORTH" - (PAGE 5)

THEATRE & TOWN	DATE	RENTAL
RIALTO, BROOKLYN	1/3-5/1937	B
LIVONIA, "	1/3-6	27.50
DE LUXE, WOODSIDE	"	35.00
WINDSOR, BROOKLYN	"	B
VENUS, "	1/3-5	40.00
GRAND, FOREST PARK	"	40.00
BEVERLY, N. Y. C.	1/3-4	B
HUDSON PLAYHOUSE, N. Y. C.	1/5-6	40.00
CENTRAL, N. Y. C.	"	85.00
QUENTIN, BROOKLYN	1/5-7	52.50
MELROSE, "	1/6-7	37.50
REDICOTT, "	1/6-7	80.00
TRIBUNE, N. Y. C.	1/6-8	90.00
FLATBUSH, BROOKLYN	1/7-8	B
LIBERTY, "	"	37.50
CREST, N. Y. C.	1/8-11	90.00
BELL CINEMA, BROOKLYN	1/8-9	30.00
EDISON, N. Y. C.	1/9-11	85.00
ARCADE, "	"	85.00
CUMBERLAND, BROOKLYN	"	40.00
PARKWAY, N. Y. C.	1/10-12	65.00
GRAHAM, GRIFFITH'S BEACH	"	35.00
GRANT, N. Y. C.	1/12-14	B
LUXOR(Bloecker), N. Y. C.	1/12-13	80.00
IDLE HOUR, LONG ISLAND CITY	1/12-14	30.00
VANITY, BROOKLYN	1/13-14	40.00
ROGERS(Rogers), BROOKLYN	1/17-19	30.00
HOWARD, HOWARD BEACH	1/19-20	25.00
SUTTER, BROOKLYN	1/20-21	40.00
EAGLE, "	1/21-22	25.00
COMET, "	1/24-26	35.00
PLAZA, N. Y. C.	1/26	75.00
CHELSEA, "	1/25-29	80.00
PALACE, CORONA	"	40.00
AMERICAN(Manhattan), BROOKLYN	"	50.00
ASTOR, BROOKLYN	1/29-31	50.00
EAGLE, N. Y. C.	1/30-2/1	115.00
TRANS-LUX, BROOKLYN	1/31-2/1	25.00
JEFFERSON, "	1/31-2/2	30.00
6[illegible] ST. PLAYHOUSE, N. Y. C.	"	40.00
LIDO, BROOKLYN	2/2-4	75.00
CRAFT, N. Y. C.	2/3-4	35.00
TOWN(1st), N. Y. C.	"	75.00
VENICE, "	2/3	40.00
FILMLESS(Myrtle), BROOKLYN	2/4-5	25.00
JEROME, BROOKLYN	2/6-8	35.00
MORNINGSIDE, N. Y. C.	2/7-8	35.00

"DODSWORTH" - (PAGE 6)

THEATRE & TOWN	DATE	RENTAL
CONGRESS, N. Y. C.	2/7-9/1937	75.00
VARIETY, "	2/11	B
BORO HALL, BROOKLYN	2/11-12	75.00
79TH ST., N. Y. C.	2/12-14	65.00
GEORGE M. COHAN, N. Y. C.	2/13-14	100.00
PLAZA, N. Y. C.	2/14	75.00
FARRELL, SO. RICHMOND HILL	2/14-16	35.00
GEM(5th), N. Y. C.	2/16-17	35.00
MAJESTIC(Seneca), BROOKLYN	"	30.00
GRANDVIEW, "	"	30.00
BELVEDERE, BROOKLYN	2/17-18	30.00
LITTLE CARNEGIE, N. Y. C.	2/19-22	125.00
VILLAGE, N. Y. C.	2/20	85.00
DECATUR, "	2/21-23	30.00
SAVOY(34th), "	2/22-23	30.00
CLASSIC, BROOKLYN	2/22-24	40.00
EDISON, N. Y. C.	2/23-24	35.00
SUTTON, "	"	35.00
PLAZA, SOUTH JAMAICA	2/25-26	35.00
KEYSTONE, BROOKLYN	"	30.00
MADISON, N. Y. C.	3/2-3	85.00
GRACERCY, "	3/9-10	35.00
PHOTOPLAY, "	"	25.00
GOLD, BROOKLYN	"	25.00
WILLOUGHBY, "	3/10-11	B
MELROSE, N. Y. C.	3/11-12	25.00
NEW SAVOY, N. Y. C.	"	35.00
LAKELAND, BROOKLYN	"	B
EARLE, BROOKLYN	3/17-18	50.00
ART, N. Y. C.	3/20-22	75.00
TOMPKINS, BROOKLYN	3/25-26	30.00
TIFFANY, N. Y. C.	3/27-29	35.00
AMERICAN MOVIES, N. Y. C.	4/2-3	30.00
MODEL, BROOKLYN	4/4-5	25.00
MINERVA, "	4/14-16	35.00
HAPPY HOUR, "	4/13-14	35.00
RAVEN, WOODHAVEN	4/16-17	30.00
MAJOR, N. Y. C.	4/21-22	20.00
OSCEOLA, "	4/25	15.00
LIDO, "	4/28-29	30.00
LUCKY STAR, "	5/7	20.00
MARDI GRAS, BROOKLYN	5/11-12	17.50
DECATUR, "	5/13-14	20.00
VERNON, LONG ISLAND CITY	5/18-19	30.00
STADIUM, N. Y. C.	5/13-20	20.00
WALLACK, "	5/20-23	100.00
MUNICIPAL, "	5/27-28	12.50

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

"DODSWORTH" - (PAGE 6)

THEATRE & TOWN	DATE	RENTAL
GEM, N. Y. C.	1/26-28/1939	25.00
HAMILTON (CHINA ROOM), N. Y. C.	1/30-2/1	50.00
MAYFAIR, N. Y. C.	2/24-25	20.00
ALDEN, "	3/7-8	20.00
LANE, NEW ROMP	4/13-14	30.00
CINEMA, BROOKLYN	4/25-26	15.00
FORUM, N. Y. C.	5/19	25.00
KROLL, "	5/24-25	25.00
STANLEY, BROOKLYN	5/26-27	17.50
GLENWOOD (Flatbush), BROOKLYN	6/1-2	15.00
EAGLE, BROOKLYN	6/13-14	15.00
WESTCOTT, N. Y. C.	"	25.00
ACADIA, NEW GARDENS	6/20-22	30.00
TRANS-LUX (52nd), N. Y. C.	8/3-4	50.00
6TH ST. PLAYHOUSE, N. Y. C.	9/1-2	30.00
NEW RELEASE, N. Y. C.	9/26-27	17.50
THALIA, N. Y. C.	10/2-4	35.00
KENDALL, WOODSIDE	12/20-21	25.00
UNIVERSITY, N. Y. C.	1/9-11/1940	20.00
ASTOR, BROOKLYN	1/23-24	25.00
RIVOLI, N. Y. C.	1/26-27	25.00
"B" INDICATES BRANDT BLANKET CONTRACT		60,572.52
"BC" " SPENCER & COCALIS BLANKET CONTRACT		4,099.30
"R" " RANDFORCE BLANKET CONTRACT		7,550.00
"C" " CENTURY " "		3,932.58
"P" " PRUDENTIAL " "		315.00
TOTAL		137,692.70

"DODSWORTH" - (PAGE 7)

THEATRE & TOWN	DATE	RENTAL
ART, BROOKLYN	5/28-29/1937	25.00
PROGRESS, N. Y. C.	6/1-2	12.50
BRIDGE, "	6/4-5	17.50
BORO, "	6/5	12.50
TERO, "	6/10-11	12.50
COAST STAR, "	7/6	12.50
ZENITH, "	7/27-28	30.00
PARADISE, BROOKLYN	8/3-4	30.00
GRACE, "	8/8-9	20.00
SCENT, "	8/24-25	20.00
MAYER, N. Y. C.	8/25-26	15.00
PRESIDENT, "	9/3-4	B
LANCE, "	9/7-8	15.00
MONROE, BROOKLYN	9/28-29	25.00
SURREY, N. Y. C.	10/12-13	40.00
ACME, BROOKLYN	10/19-20	22.50
JEROME, N. Y. C.	11/3-4	30.00
ASTOR, BROOKLYN	11/13-21	25.00
LITTLE CARNEGIE, N. Y. C.	12/19-22	125.00
TIVOLI, N. Y. C.	12/22-23	30.00
MANHATTAN, "	1/6-7/1938	15.00
CENTER, BROOKLYN	1/7-8	17.50
WILLIAMSBURG, "	1/25-26	20.00
68TH ST. PLAYHOUSE, N. Y. C.	2/24-25	25.00
COLONY (79th), N. Y. C.	2/25-26	B
RIALTO, N. Y. C.	3/20-21	17.50
RENAISSANCE, N. Y. C.	3/22-23	50.00
GRAMERCY PARK, "	3/24-26	35.00
GREELEY, "	3/29	25.00
UNIVERSITY, "	4/8-10	20.00
WEST END, "	4/29	15.00
WALDORF, "	5/17-19	35.00
DEVON, "	6/11	15.00
PRESIDENT, "	6/21	25.00
HEIGHTS, "	7/4-5	35.00
ROYAL (11th), BROOKLYN	7/30-8/1	25.00
5TH AVENUE PLAYHOUSE, N. Y. C.	8/4-5	25.00
DE LUXE, BROOKLYN	8/17-18	20.00
SCHUYLER, N. Y. C.	10/18-19	20.00
EDGAYER, "	10/19-20	20.00
PASTIME, "	10/22	35.00
ZENITH, "	10/26-27	17.50
CASTELLO, "	11/4-5	20.00
BELL CINEMA, BROOKLYN	11/10-11	15.00
SUTTON, N. Y. C.	11/24-25	25.00
CENTURY, "	11/28-12/1	20.00
EDISON, "	11/29-30	25.00
PLAZA, BROOKLYN	1/5/1939	15.00
CARLTON, JAMAICA	1/17-19	30.00

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

DELAYED EVENT

THEATRE & TOWN	DATE	RENTAL
RIVOLI, NEW YORK CITY	12/25-1/15/1937	15,248.34
TUCKE, "	3/2-4	B
LAKE "	3/4-7	305.00
HARLEM OPERA HOUSE, NEW YORK CITY	3/5-8	125.00
ROOSEVELT, NEW YORK CITY	3/5-8	350.00
ODEON "	3/5-8	75.00
MAPLEHILL "	3/5-8	SC
OCTHAM "	3/5-9	600.00
HARLEM GRAND "	3/4-8	250.00
SUNSET "	3/6-8	175.00
34TH ST. "	3/7-8	40.00
SELWYN "	3/8-16	500.00
TUXEDO "	3/9-11	125.00
EARLE "	3/9-10	80.00
ALPINE "	3/9-12	SC
MT. EDEN "	3/9-11	225.00
PLAZA "	3/10-12	250.00
SUPERIOR "	3/11	60.00
RIDGEWOOD BKLYN.	3/12-15	B
RIVO, NEW YORK CITY	3/12-15	325.00
BLISS, LONG ISLAND CITY	3/12-14	175.00
RIVERSIDE, NEW YORK CITY	3/12-15	425.00
MELBA "	3/12-15	SC
ALLERTON "	3/12-15	SC
BEACON "	3/12-15	SC
STODDARD "	3/12-15	SC
ROOSEVELT, FLUSHING	3/12-13	55.00
RENAISSANCE, NEW YORK CITY	3/12-13	125.00
CASTLEHILL "	3/13-15	SC
INTERBORO "	3/13-15	SC
SQUARE "	3/13-15	SC
PILGRIM "	3/13-15	SC
WAKEFIELD "	3/13-15	SC
LADONIA "	3/13-15	SC
JEWEL "	3/13-16	150.00
GRAND OPERA "	3/13-16	350.00
CITY HALL "	3/13-15	B
WASHINGTON "	3/14-16	175.00
COLUMBIA "	3/14-16	100.00
MONROE "	3/16-17	135.00
TIVOLI, BKLYN.	3/17-19	B
PARK LANE, NEW YORK CITY	3/17-18	175.00
ST. GEORGE, BKLYN.	3/17-18	SC
ROOSEVELT "	3/18-19	B
REGENT , NEW YORK CITY	3/18	30.00
HEIGHTS "	3/18-22	SC
CONGRESS "	3/19-22	75.00
GUYANA, BKLYN.	3/19-22	C
TERMINAL "	3/19-22	B
CARLTON, NEW YORK CITY	3/19-22	SC

DELAYED EVENT

THEATRE & TOWN	DATE	RENTAL
DE LUXE, BRONX	3/19-20/1937	75.00
COLLEGE, COLLEGE POINT	3/19-20	100.00
NEW DELAWARE, NEW YORK CITY	3/19-20	100.00
DORSET "	3/19-21	125.00
PRESCOTT "	3/20-23	350.00
HARD "	3/20-22	SC
ROSEDALE "	3/20-22	SC
EAGLE "	3/20-22	115.00
KINART, BKLYN.	3/21-23	100.00
PALESTINE, NEW YORK CITY	3/21-23	100.00
STAR, BKLYN.	3/21-22	C
PACIC "	3/23-25	C
ZONE, NEW YORK CITY	3/23-24	50.00
OASIS, BKLYN.	3/23-24	B
CLARIDGE "	3/24-26	B
CHELSEA, NEW YORK CITY	3/24-25	40.00
EDGEMAN "	3/24-25	35.00
GREELEY "	3/24-25	85.00
CITY "	3/24-25	100.00
PIERCE, BRONX	3/25-26	SC
CRESCENT, 2ND AVE., NEW YORK CITY	3/25-27	50.00
DUMONT, BRONX	3/25-26	100.00
SUMNER, BKLYN.	3/26-27	85.00
VICTORIA, NEW YORK CITY	3/26-29	SC
DALY, BRONX	3/26-27	75.00
ASTOR "	3/26-27	125.00
PARK, 3C. CORNE PARK	3/26-27	P
MARINE, BKLYN.	3/26-27	C
GRANADA, NEW YORK CITY	3/26-27	50.00
RIDGEWOOD, BKLYN.	3/26-27	C
CREST, NEW YORK CITY	3/27-29	50.00
HARRIS, 42ND ST. "	3/27-29	500.00
SAVOY, 34th ST. "	3/27-28	50.00
CHALONER "	3/28-29	100.00
BAYSIDE, BAYSIDE	3/28-30	A
FREEMAN, NEW YORK CITY	3/29-30	125.00
ARCADIA 59th ST. "	3/28-30	100.00
ALBEMARLE, BKLYN.	3/29-30	C
SAVOY "	3/29-30	B
RIVOY, BRONX	3/30-31	2[illegible]
STATE, BKLYN.	3/30-31	B
PELHAM, NEW YORK CITY	3/30-31	[illegible]
TOWER, BRONX	3/30-31	[illegible]
RIALTO, WHITESTONE	3/30-31	[illegible]
PITT, NEW YORK CITY	3/30-31	[illegible]
NATIONAL, BKLYN.	3/30-4/1	[illegible]
STATE, NEW YORK CITY	3/31-4/1	[illegible]
PARADISE, BKLYN.	3/31-4/2	C

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

BELOVED EXHIBIT

THEATRE & TOWN	DATE	RENTAL
8th ST. PLAYHOUSE, NEW YORK CITY	3/31-4/1/1937	100.00
EMPRESS, NEW YORK CITY	3/31-4/1	40.00
STATE, BKLYN.	3/31-4/1	125.00
68TH ST. PLAYHOUSE, NEW YORK CITY	3/31-4/1	40.00
QUEENS, QUEENS VILLAGE	3/31-4/2	C
FLEETWOOD, NEW YORK CITY	3/31-4/1	100.00
SAVOY, JAMAICA	4/1-2	200.00
AVALON, BRONX	4/1-2	65.00
OXFORD "	4/1-2	65.00
TOWER, NEW YORK CITY	4/1-3	93.75
KINGSBRIDGE "	4/1-2	93.75
ATLANTIC, BKLYN.	4/1-2	B
INWOOD "	4/2-3	B
FORTWAY "	4/2-3	125.00
HARBOR "	4/2-3	60.00
DRAKE, HEGO PARK	4/2-3	40.00
STATE, NO. OZONE PARK	4/2-3	P
AUSTIN, NEW GARDENS	4/2-3	50.00
APOLLO, BKLYN.	4/2-3	SC
COLISEUM "	4/2-3	100.00
RIALTO "	4/3-5	C
ARDEN, NEW YORK CITY	4/3-6	SC
AVE. D, BKLYN.	4/3-5	C
TOMPKINS "	4/4-5	30.00
GLOBE "	4/4-6	B
NEW, ROCKAWAY BEACH	4/4-5	85.00
ALDEN, NEW YORK CITY	4/4-5	B
FENWAY "	4/4-5	106.25
TAFT, FLUSHING	4/4-6	50.00
EMPIRE, BKLYN.	4/4-5	B
GRANADA "	4/4-6	C
LITTLE NECK, LITTLE NECK	4/4-5	100.00
HALSEY, BKLYN.	4/6-8	B
BERKSHIRE "	4/6-7	85.00
PHOTOPLAY, NEW YORK CITY	4/6-7	25.00
FLORAL, FLORAL PARK	4/6-7	P
BEDFORD, NEW YORK CITY	4/5-8	B
RUGBY, BKLYN.	4/6-7	C
BIJOU, "	4/5-7	50.00
JEROME, NEW YORK CITY	4/7-8	100.00
WINDSOR, BKLYN.	4/7-8	B
STILLWELL "	4/7-8	P
CASAPOLE "	4/7-8	85.00
EARLE "	4/7-8	50.00
AVE. U. "	4/7-8	C
HOWARD, HOWARD BEACH	4/8-9	25.00
ELTON, BKLYN.	4/9-10	B
RITZ, "	4/9-10	85.00
NASSAU (NASSAU AVE.) BKLYN.	4/9-10	50.00
ENDICOTT, BKLYN.	4/9-10	80.00
CRESCENT, ASTORIA	4/9-10	27.50
RIVIERA, BKLYN.	4/9-3	SC

BELOVED EXHIBIT

THEATRE & TOWN	DATE	RENTAL
BELLAIRE, BELLAIRE	4/9-10/1937	P
PARKWAY, BKLYN.	4/9-10	See Napleton 4/15-20
ARION, MIDDLE VILLAGE	4/9-10	B
GROVE, BKLYN.	4/10	25.00
SUTTON CINEMA, NEW YORK CITY	4/10-12	65.00
LINCOLN, BKLYN.	4/11-13	50.00
RIVOLI, ROCKAWAY	4/11-12	See New 4/4-5
COMMUNITY, QUEENS VILLAGE	4/12-13	C
CRAFT, NEW YORK CITY	4/12-13	35.00
HUDSON PLAYHOUSE "	4/13-14	40.00
ELECTRA, BKLYN.	4/13-15	B
LUCKER, (BLEECKER ST.) NEW YORK CITY	4/13-14	40.00
NEW 14TH ST., NEW YORK CITY	4/13-14	100.00
HOLLYWOOD, BKLYN.	4/14-15	65.00
HOBART, WOODSIDE	4/14-15	40.00
HOLLIS, HOLLIS	4/14-15	P
GARDEN, SPRINGFIELD GARDENS	4/14-15	P
WINDSOR, BRONX	4/15-15	B
AMERICAN, BKLYN.	4/15-16	50.00
DECATUR, NEW YORK CITY	4/15-15	30.00
LINDEN, ST. ALBANS	4/15-17	100.00
SIX, BKLYN.	4/15-16	40.00
WINDSOR (GRAND ST.), NEW YORK CITY	4/15-17	40.00
ROYAL(10th AVE.) NEW YORK CITY	4/16	40.00
VENUS, BKLYN.	4/16-17	35.00
VENICE, NEW YORK CITY	4/16	40.00
BELVEDERE, BKLYN.	4/16-17	50.00
MANHATTAN, NEW YORK CITY	4/17-19	50.00
AVON, BKLYN.	4/17-19	B
LAURELTON, LAURELTON	4/18-20	100.00
DITMAS, ASTORIA	4/18-20	50.00
ELTON, ELMHURST	4/18-20	50.00
NAPLETON, BKLYN.	4/18-20	35.00
BRONX, NEW YORK CITY	4/18-20	175.00
TOLENT, JACKSON HEIGHTS	4/18-19	B
ISLAND, HOLLIS	4/18-19	60.00
WILLOUGHBY, BKLYN.	4/18-20	B
VERNON, LONG ISLAND CITY	4/19-20	30.00
HOWARD, BKLYN.	4/20-21	40.00
GRAND "	4/20-21	SC
ISLE BLUE, LONG ISLAND CITY	4/20-22	50.00
FEARLESS (WYCKOFF AVE.) BKLYN.	4/20-21	25.00
77th ST., NEW YORK CITY	4/20-21	SC
FLATBUSH, BKLYN.	4/20-21	B
METRO "	4/20-21	40.00
GRANDVIEW "	4/20-21	30.00
MAJESTIC (SENECA AVE.) BKLYN.	4/20-21	30.00
ARCADIA, NEW YORK CITY	4/20-21	B

P.V.3

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

Page 6

BELOVED EXPAT

THEATER & TOWN	DATE	RENTAL
QUEENS, BKLYN.	4/25-26'1937	40.00
TRANS-ART "	5/27-29	37.50
RAV..., NEW YORK CITY	4/28-29	15.00
ATLANTI "	5/28-29	30.00
REX 67th ST. "	6/3-5	27.50
PLAZA, BKLYN.	6/3-5	30.00
LIDO "	6/7-9	75.00
LINCOLN, NEW YORK CITY	6/9-10	See Cmoo 4/5-9
[redacted]	[redacted]	
CUMBERLAND, BKLYN.	6/15-16	30.00
MADISON, (102nd ST.) CITY	6/15-16	25.00
PIONEER, BKLYN.	6/15-16	37.50
GRANT, NEW YORK CITY	6/2-3	B
CENTRAL "	6/9-10	100.00
VARIETY "	6/13	B
TIFFANY "	6/20-22	25.00
HIKETVA, BKLYN.	6/20-21	25.00
GLENWOOD (FLATBUSH AVE.) BKLYN.	7/6-7	25.00
PLAZA, SO. JAMAICA	7/8-9	35.00
MUNICIPAL, NEW YORK CITY	7/20-21	12.50
RITZ, REDEX	7/21-22	B
LIBBY, BKLYN.	7/25-26	35.00
COLONY 79th ST. NEW YORK CITY	7/27-28	B
PROGRESS, NEW YORK CITY	7/27-28	12.50
PARADISE, BKLYN.	7/30-31	30.00
MOKIL "	8/1-3	25.00
MAJOR, NEW YORK CITY	8/11-12	20.00
MAIDI GRAS, BKLYN.	8/30-31	17.50
KAMCO, REDEX	9/9-10	15.00
BRIDGE, NEW YORK CITY	9/10-11	17.50
STADIUM "	9/10-11	20.00
GRACE, BKLYN.	9/17-18	20.00
BORO, NEW YORK CITY	9/21-22	12.50
WALLACE "	9/23-26	100.00
DORSET, BKLYN.	9/26-27	20.00
NAVARRE "	10/10-11	25.00
REO, NEW YORK CITY	10/16-	12.50
EAGLE, BKLYN.	10/26-27	25.00
ACME "	10/29-30	22.50
NEW YORKER, NEW YORK CITY	11/16-17	25.00
GRAYLIGHT, "	11/23-24	35.00
COAST STAR "	12/2/	12.50
DIGNITY, BKLYN.	12/21-22	20.00
MO...E "	1/13-14/1938	25.00
WILLI/WOODS "	3/17-18	17.50
CI...A "	3/31-4/1	17.50
POST, NEW YORK CITY	3/31-4/1	17.50
WAT...D "	4/23	15.00
UNIV...SAL "	5/19	25.00

Page 5

BELOVED EXPAT

THEATER & TOWN	DATE	RENTAL
VARSITY, BKLYN.	4/21-22'1937	40.00
TRAYMORE "	4/21-22	C
GEM, FAR ROCKAWAY	4/21-22	B
GRAHAM, BKLYN.	4/21-22	25.00
ROXY, NEW YORK CITY	4/20-23	125.00
PALACE, CORONA	4/22-23	40.00
ST. ALBANS, ST. ALBANS	4/22-24	75.00
VILLAGE, NEW YORK CITY	4/22-23	25.00
UNIVERSITY, "	4/22-24	B
BORO HALL, BKLYN.	4/23-24	35.00
LIVONIA "	4/23-24	25.00
CARLTON, JAMAICA	4/23-24	B
FISK, SINFIELD	4/23-24	35.00
CLIFTON, NEW YORK CITY	4/23-24	B
COMET, BKLYN.	4/25-26	35.00
RAYMOND, CITY ISLAND	4/25-26	25.00
IMPERIAL, BKLYN.	4/25-27	B
ARCADE, NEW YORK CITY	4/26-27	30.00
YORK (1st AVE.) "	4/27-28	35.00
UTICA, BKLYN.	4/27-28	B
TREMONT, NEW YORK CITY	4/27-2	B
EXPRESS , BKLYN.	4/27-28	B
SUNSET "	4/28-29	40.00
PALACE (2nd AVE.) BKLYN.	4/29-30	50.00
GARFIELD "	4/29-5/1	B
RAVEN, BROOKLYN	4/30-5/1	30.00
SHELDON, BKLYN.	4/30-5/1	37.50
KENART "	5/1-3	SC
MORNINGSIDE, NEW YORK CITY	5/2-3	35.00
PARKWEST "	5/2-4	45.00
WALDORF ",	5/2-3	B
SUTTER, BKLYN.	5/5-7	B
DE LUXE, WICKSHIRE	5/7-8	37.50
ROGERS, BKLYN.,	5/7-8	30.00
ART, NEW YORK CITY	5/9-10	75.00
GOLD, BKLYN.	5/9-10	25.00
NEWLIFE "	5/9-10	20.00
JERICHO, NEW YORK CITY	5/9-11	35.00
OSCEOLA "	5/12-13	20.00
CRAVEN'S, BKLYN.	5/12-13	30.00
FARRELL, SO. RICHMOND HILL	5/13-14	35.00
EDISON, NEW YORK CITY	5/13-15	65.00
STANLEY, BKLYN.	5/14-15	35.00
AMERICAN MOVIES, NEW YORK CITY	5/14-15	30.00
LITTY STAR "	5/15-	25.00
KELROSE "	5/20-1	25.00
HAPPY HOUR, BKLYN.	5/20-1	35.00
LYRIC, "	5/20-21	30.00
ART "	5/23-25	37.50
FLORENCE, NEW YORK CITY	5/23-25	100.00

P-1-4

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

	DELUXE EVENT DATE	RENTAL
[illegible] P, B.I NEW YORK CITY	5/20-21/1938	30.00
NEW UTRECHT, BELTH.	5/21	20.00
[illegible] NEW YORK CITY	6/24	15.00
[illegible], BELTH.	8/3-4	17.50
[illegible] •	1/13-14/1939	25.00
GALLO (E. TREMONT AVE.) BELTH.	1/29-30	17.50
CLASSIC, BELTH.	2/10-11	25.00
WAVERLY, NEW YORK CITY	3/20-21	20.00
[illegible], •	4/4-5	25.00
ALDEN •	4/11-12	20.00
CENTURY •	5/23-25	20.00
JEWELL, BELTH.	5/25-26	17.50
BEVERLY, NEW YORK CITY	6/4-5	25.00
NORMANDIE •	6/8-11	40.00
TERRACE •	6/18-19	30.00
WALDORF •	6/18-19	25.00
EARLE, JACKSON HEIGHTS	6/20-22	22.50
PALESTINE, NEW YORK CITY	7/6	17.50
65th ST. FLATBUSH •	7/13-15	67.50
ARCADIA •	7/16-17	17.50
JEWEL •	7/20	20.00
GRANDCREST PARK •	7/22-25	40.00
NEW DELANCEY •	7/25	17.50
BIJOU •	7/26	15.00
AUDUBON •	8/26-28	35.00
ROGERS (ROGERS AVE.) BELTH.	9/13-14	35.00
COLONY, NEW YORK CITY	9/17-18	25.00
UNIVERSITY •	11/29-12/1	20.00
COLONY, BELTH.	12/17-18	25.00
KENT •	12/20-21	25.00
"B" INDICATES BRANDT BLANKET CONTRACT		2,230.00
"SC" • SPRINGER & COCALIS BLANKET CONTRACT		3,643.30
"E" • EASTCHESTER • •		6,050.00
"C" • CENTURY • •		3,350.00
"P" • PRUDENTIAL • •		315.00
	TOTAL	46,933.80

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

KANSAS CITY EXCHANGE — Mar. 5, 1940

AFFILIATED CONTRACTS

THEATRE	ELEGANT Play Date	ELEGANT Price	ACCUSED Play Date	ACCUSED Price	THEY Play Date	THEY Price	MEN NOT GODS Play Date	MEN NOT GODS Price
APOLLO	6/5-9/37	15.00	—	-	—	-	—	-
BENTON	6/23-25/37	45.00	PWP 7/24/37	15.00	PWP 4/2/38	7.50	PWP 7/24/37	17.34
GLADSTONE	7/29-30/37	12.50	PWP 7/24/37	10.00	PWP 4/2/38	5.00	PWP 7/24/37	8.67
ISIS	--	-	PWP 7/24/37	10.00	PWP 4/2/38	5.00	PWP 7/24/37	10.40
LINCOLN	—	-	PWP 7/24/37	15.00	PWP 4/2/38	75.00	PWP 7/24/37	17.34
LINWOOD	4/24-25/37	12.50	PWP 7/24/37	10.00	PWP 4/21/38	5.00	PWP 7/24/37	8.67
MADRID	6/19-21/37	25.00	PWP 7/24/37	10.00	PWP 4/2/38	5.00	PWP 7/24/37	8.67
MIDLAND	3/26-4/1/7	400.00	—	-	—	-	8/27-9/2/7	400.00
PLAZA	5/28-29/37	40.00	—	-	PWP 4/2/38	10.00	PWP 7/24/37	2.73
ROCKHILL	7/29-30/37	15.00	PWP 7/24/37	10.00	PWP 4/2/38	5.00	PWP 7/24/37	10.40
VISTA	6/12-13/37	12.50	PWP 7/24/37	10.00	PWP 4/2/38	5.00	PWP 7/24/37	8.67
WALDO	6/25-26/37	12.50	PWP 7/24/37	10.00	PWP 4/2/38	5.00	PWP 7/24/37	8.67
WARWICK	6/9-11/37	25.00	PWP 7/24/37	15.00	PWP 4/2/38	7.50	PWP 7/24/37	17.34
TOTALS	—	595.00		115.00		135.00		543.90

KANSAS CITY EXCHANGE — Mar. 5, 1940

AFFILIATED CONTRACTS

THEATRE	FIRE OVER ENG. Play Date	FIRE OVER ENG. Price	STRANGER Play Date	STRANGER Price
APOLLO	—	-	8/16-9/6/37	100.00
BENTON	PWP 4/2/38	7.50	9/1-3/37	15.00
GLADSTONE	PWP 4/2/38	5.00	11/9-10/37	10.00
ISIS	PWP 4/2/38	5.00	—	-
LINCOLN	PWP 4/2/38	7.50	9/7-9/37	15.00
LINWOOD	PWP 4/2/38	5.00	10/12-13/37	10.00
MADRID	—	-	10/12-13/37	15.00
MIDLAND	3/19-25/37	400.00	—	-
PLAZA	PWP 4/2/38	10.00	8/10-12/37	30.00
ROCKHILL	PWP 4/2/38	5.00	10/19-20/37	10.00
UPTOWN	—	-	7/2-8/37	200.00
UPTOWN	—	-	7/13-16/37	112.80
VISTA	PWP 4/2/38	5.00	11/23-24/37	10.00
WALDO	PWP 4/2/38	5.00	10/5-6/37	10.00
WARWICK	PWP 4/2/38	7.50	—	-
TOTALS	—	462.50		527.80

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

KANSAS CITY EXCHANGE — Mar. 5, 1940

AFFILIATED CONTRACTS

THEATRE	DOLLWORTH Play Date	DOLLWORTH Price	ROMAN CHASES Play Date	ROMAN CHASES Price	BELOVED Play Date	BELOVED Price	LITE ONE Play Date	LITE ONE Price
APOLLO	—	-	7/21-23/37	60.00	—	-	3/18-20/37	125.00
BENTON	1/6-7/37	40.00	7/28-30/37	30.00	5/20-21/37	40.00	5/4-5/37	30.00
GLADSTONE	2/7-9/37	20.00	8/28-30/37	20.00	5/27-28/37	20.00	6/8-9/37	20.00
ISIS	11/22-25/36	125.00	7/17-20/37	125.00	3/13-17/37	125.00	—	-
LINCOLN	12/15/36	37.50	PWEP 8/20/38	18.75	PEP 6/26/37	37.50	3/2-4/37	37.50
LINCOLN	—	-	—	-	—	-	6/7-8/38	37.50
LINWOOD	2/7-9/37	40.00	9/1-3/37	30.00	5/27-28/37	40.00	PEP 8/20/38	15.00
MADRID	11/29-12/2/6	80.00	9/2-3/37	30.00	4/27-28/37	30.00	5/4-5/37	30.00
MIDLAND	10/2-8/36	2689.00	8/21-27/?	1852.00	1/22-28/37	2682.00	1/29-2/4/?	2372.00
PLAZA	11/15-17/36	225.00	7/10-12/37	200.00	3/9-10/37	225.00	3/16-17/37	200.00
ROCKHILL	2/7-9/37	30.00	10/5-6/37	30.00	8/27-28/37	40.00	6/8-9/37	30.00
VISTA	3/5-6/37	20.00	10/7-8/37	20.00	6/9-10/37	20.00	6/25-26/37	20.00
WALDO	1/6-7/37	35.00	8/18-20/37	20.00	5/24/37	35.00	5/5-6/37	20.00
WARWICK	PEP 6/19/?	70.00	7/24-27/37	80.00	3/16-19/37	70.00	3/24-26/37	80.00
TOTALS		3361.50		2485.75		3364.50		2987.00

KANSAS CITY EXCHANGE — Mar. 6, 1940

AFFILIATED CONTRACTS

THEATRE	DESPERADO Play Date	DESPERADO Price	MOHICANS Play Date	MOHICANS Price	REMEMBER Play Date	REMEMBER Price	MYSTERIES Play Date	MYSTERIES Price
APOLLO	—	-	—	-	2/4-6/37	30.00	—	-
BENTON	2/20-22/37	30.00	11/27-28/36	30.00	PEP 7/31/?	25.00	PWEP 9/24/?	17.02
GLADSTONE	3/27-29/37	20.00	1/1-2/37	17.50	5/4-5/37	13.50	PWEP 9/24/?	8.81
ISIS	1/14-16/37	125.00	10/29-31/36	65.00	—	-	PWEP 9/24/37	10.22
LINCOLN	12/25-26/36	37.50	10/16-17/36	37.50	—	-	—	-
LINWOOD	3/27-29/37	30.00	1/1-2/37	25.00	PEP 7/31/?	17.50	PWEP 9/24/37	8.81
MADRID	1/17-19/37	30.00	11/27-28/36	20.00	3/30-31/37	20.00	PWEP 9/24/37	8.81
MIDLAND	11/20-25/36	1250.00	8/28-9/3/6	2465.00	12/18-24/6	2637.00	3/5-11/37	600.00
PLAZA	1/7-8/37	200.00	10/23-24/36	150.00	2/3-5/37	80.00	PWEP 9/24/?	27.25
ROCKHILL	3/27-29/37	20.00	1/1-2/37	25.00	5/24-25/37	20.00	PWEP 9/24/37	10.22
VISTA	4/11-13/37	20.00	1/8-9/37	15.00	5/12-13/37	12.50	PWEP 9/24/37	8.81
WALDO	2/21-23/37	20.00	11/27-28/36	20.00	PEP 7/30/37	17.50	PWEP 9/24/37	8.81
WARWICK	PEP 6/19/37	50.00	11/5-7/36	40.00	2/10-12/37	30.00	PWEP 9/24/37	17.02
TOTALS		1832.50		2910.00		3073.00		824.89

89

Interrogatory Answers by United Artists Corporation in United States v. Paramount (Government Exhibit 142, United States v. Paramount)

GOVERNMENT EXHIBIT 142 IN PARAMOUNT

KANSAS CITY EXCHANGE — UNAFFILIATED CONTRACTS — Mar. 5, 1940

THEATRE	[illegible]		GRAND KAY		KENYON EXCH		LIFE CIRC	
	Play Date	Price	Play Date	Price	Play Date	Price	Play Date	Price
[illegible]	3/[illegible]	40.00	11/[illegible]	[illegible]	8/16-17/37	22.50	6/27/37	15.00
[illegible]	1/[illegible]	60.00	12/14-15/37	2[illegible]	8/10-11/37	40.00	8/1-3/37	25.00
[illegible]	9/[illegible]	15.00	8/6-7/37	10.00	—	-	9/17/18/38	12.50
[illegible]	[illegible]	50.00	9/[illegible]	[illegible]	8/1-3/37	22.50	6/17-18/37	15.00
[illegible]	1/[illegible]	50.00	9/[illegible]	[illegible]	8/1/37	22.50	6/12/37	17.50
Lyric	1/[illegible]	75.00	7/[illegible]	[illegible]	—	-	4/2-3/37	42.50
Tivoli	[illegible]	15.00	—	-	—	-	9/7-8/38	12.50
Twinkle	—	-	9/8-9/37	40.00	8/29-9/1/37	35.00	8/23-25/37	40.00
Castle	8/23/37	30.00	12/21/37	15.00	8/4/37	20.00	4/7-8/37	15.00
Castle	—	-	—	-	—	-	2/27/40	20.00
Central	8/16-17/37	22.50	8/[illegible]	17.50	8/1-2/37	22.50	6/8/37	17.50
Circle	8/15-16/37	17.50	12/17/[illegible]	15.00	8/2-4/37	17.50	8/29-9/1/37	15.00
Colonial	8/15-16/37	45.00	9/[illegible]	15.00	1/25-26/38	18.50	6/12-14/37	25.00
Colonial	—	-	—	-	—	-	2/13-14/40	10.00
Gem	1/26-27/37	25.00	1/15/38	17.50	6/8/37	20.00	4/7-8/37	17.50
Gillham	8/2-3/37	30.00	9/26-27/37	15.00	FEB 10/2/7	15.00	8/2-3/37	12.50
Gillham	—	-	—	-	—	-	2/13-15/40	10.00
Liberty	1/6-8/37	25.00	9/3-4/37	15.00	4/23-24/37	25.00	8/13-14/37	25.00
Lindbergh	1/[illegible]	90.00	8/23-25/37	45.00	4/23-25/37	90.00	8/2-3/37	35.00
Mary Lee	1/[illegible]	35.00	8/[illegible]	15.00	8/2-4/37	17.50	8/23-25/37	15.00
[illegible]	[illegible]	12.50	—	-	—	-	—	-
[illegible]	8/[illegible]	35.00	9/[illegible]	17.50	8/25-27/37	25.00	6/6-8/37	17.50
Murray	8/[illegible]	25.00	9/25-27/37	12.50	8/1-2/37	30.00	8/13-14/37	12.50
National	8/[illegible]	35.00	11/[illegible]	17.50	8/14/37	22.50	7/20/37	15.00
Palace	8/15-[illegible]	15.00	12/14-15/37	15.00	8/8-9/37	15.00	7/25-26/37	12.50
Paseo	8/9-[illegible]	17.50	11/[illegible]	15.00	6/24/37	17.50	6/8-9/37	12.50
Prospect	1/[illegible]	12.50	12/[illegible]	12.50	—	-	9/25-27/37	15.00
Regent	8/[illegible]	40.00	11/[illegible]	20.00	8/2-3/37	22.50	6/3-8/37	20.00
Ritz	9/[illegible]	50.00	1/[illegible]	20.00	9/14-15/37	25.00	7/10-12/37	15.00
Roanoke	1/[illegible]	17.50	8/[illegible]	17.50	8 [illegible]	22.50	8/12-13/37	17.50
Roanoke	10/[illegible]	17.50	—	-	—	-	1/10-11/39	12.50
St.John	4/11-[illegible]	25.00	11/8-10/37	15.00	—	-	8/7/37	15.00
Southtown	1/[illegible]	50.00	9/7-8/37	25.00	4/24-26/37	30.00	8/1-3/37	25.00
State	—	-	11/25-[illegible]	15.00	—	-	3/16-18/39	12.50
Strand	4/16-17/37	25.00	—	-	—	-	—	-
Summit	8/[illegible]	30.00	10/[illegible]	12.50	6/8-10/37	30.00	6/13/37	12.50
Sun	8/14-15/37	27.50	11/7-8/37	12.50	6/10-11/37	15.00	6/17-18/37	12.50
Tivoli	1/[illegible]	40.00	8/[illegible]	25.00	4/23-24/37	40.00	8/2-4/37	25.00
Vogue	8/7-8/37	25.00	10/10-11/37	15.00	7/16-17/37	22.50	7/23-24/37	15.00
Westport	1/[illegible]	30.00	9/[illegible]	25.00	4/26-27/37	35.00	8/1/37	25.00
World In Motion	8/15-[illegible]	12.50	—	-	—	-	1/13-14/39	12.50
	8/[illegible]	17.50	11/[illegible]	12.50	7/20-22/37	17.50	7/27-29/37	15.00
TOTAL		1031.00		677.50		788.50		797.50

KANSAS CITY EXCHANGE — UNAFFILIATED CONTRACTS — Mar. 8, 1940

THEATRE	ESPERADO		[illegible]		RECREATION		WESTPORT	
	Play Date	Price	Play Date	Price	Play Date	Price	Play Date	Price
Admiral	4/26-27/37	15.00	4/[illegible]	[illegible]	—	-	—	-
Aladdin	3/4-5/37	30.00	11/[illegible]	[illegible]	—	-	—	-
Bagdad	8/2-3/38	12.50	7/24-25/38	12.50	—	-	2/26-27/39	10.00
Bagdad	10/28-30/39	12.50	—	-	—	-	—	-
Ballis	4/4-5/37	15.00	1/14-15/37	20.00	8/11-12/37	12.50	7/13-14/37	12.50
Belmont	4/4-5/37	22.50	1/3-4/37	20.00	5/11/37	12.50	8/31/37	12.50
Bijou	1/24-26/37	42.50	11/1-3/36	42.50	2/24-25/37	37.50	—	-
Brookside	—	-	—	-	FEB 10/9/37	15.00	FEB 10/9/37	12.50
Castle	2/26-27/37	15.00	12/30-31/36	15.00	—	-	FEB 3/12/38	6.25
Central	3/30-31/37	22.50	2/20/37	25.00	—	-	FEB 6/25/38	7.50
Circle	4/4-5/37	15.00	1/10-11/37	15.00	8/11-13/37	15.00	8/17-18/37	12.50
Colonial	4/1-3/37	25.00	6/3-4/37	20.00	5/4-5/37	20.00	7/29-30/37	17.50
Downtown	—	-	3/3-5/37	27.50	7/[illegible]-22/37	25.00	8/3-4/38	22.50
Gem	2/9/37	17.50	11/11-12/36	20.00	—	-	—	-
Gillham	3/23-24/37	15.00	1/1-2/37	15.00	—	-	—	-
Gillham	—	-	4/26-28/38	12.50	—	-	—	-
Liberty	2/19-20/37	25.00	12/6-8/36	25.00	—	-	—	-
Lindbergh	2/21-22/37	45.00	11/29-30/36	70.00	3/21-23/37	40.00	8/31-9/2/37	25.00
Mary Lee	2, 21-22/37	17.50	11/29-30/36	25.00	6/16-17/37	20.00	—	-
Mary Lee	8/19-20/37	12.50	3/2-3/37	12.50	—	-	—	-
Mckee	3/26-27/37	17.50	1/1-2/37	25.00	4/28-29/37	15.00	7/9-10/37	12.50
Murray	4/4-5/37	12.50	1/7-9/37	17.50	5/18-19/37	12.50	7/13-14/37	12.50
National	7/25-26/37	17.50	2/27/37	20.00	7/31/37	15.00	8/23/37	12.50
Palace	8/13-14/37	15.00	2/5-6/37	20.00	—	-	8/27-28/37	10.00
Palace	—	-	No Date	10.00	—	-	—	-
Paseo	3/26-27/37	15.00	1/1-2/37	17.50	—	-	8/19/37	12.50
Prospect	6/19-21/38	12.50	12/1-2/38	20.00	—	-	—	-
Prospect	—	-	3/27-29/38	12.50	—	-	—	-
Regent	1/11-12/38	35.00	1/7-9/37	35.00	FEB 1/19/38	11.25	3/22-23/38	25.00
Ritz	8/10-11/37	20.00	1/10-11/37	22.50	—	-	—	-
Roanoke	2/24-25/37	22.50	12/4-5/36	25.00	4/21-22/37	17.50	8/25-26/37	15.00
Roanoke	11/22-25/38	12.50	3/28-29/39	12.50	—	-	—	-
St.John	4/18-19/37	17.50	1/17-18/37	20.00	—	-	—	-
Southtown	2/21-22/37	35.00	11/27-28/36	40.00	3/20-22/37	25.00	6/[illegible]/37	20.00
State	—	-	5/29/37	20.00	—	-	9/14-15/37	10.00
Strand	4/18-20/37	25.00	11/29-30/36	17.50	—	-	—	-
Summit	8/16/37	15.00	1/15-16/37	17.50	8/4/37	12.50	—	-
Sun	3/30-31/37	15.00	1/10-11/37	15.00	—	-	7/10/37	10.00
Tivoli	2/23-24/37	25.00	11/29-30/36	40.00	3/24-25/37	20.00	—	-
Vogue	3/26-29/37	15.00	2/16-18/37	20.00	4/27-29/37	15.00	—	-
Westport	9/8-9/37	35.00	11/27-29/38	50.00	3/24-25/37	35.00	9/23-25/37	25.00
World In Motion	8/14-15/37	17.50	2/21-22/37	17.50	6/11-12/37	12.50	8/27-28/37	12.50
TOTAL		750.00		947.50		388.75		316.25

EXHIBIT R TO AFFIDAVIT OF JOHN F. CASEY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF DEFENDANTS

FILED JULY 12, 1956

RKO Answers to Interrogatories in *United States v. Paramount* (Government *Paramount*)

ADDITIONAL INTERROGATORIES TO BE ANSWERED BY THE DEFENDANTS IN UNITED STATES v. PARAMOUNT PICTURES, INC., ET AL.

Interrogatory 2. With respect to each feature listed in response to Interrogatory 1 (the name of each feature released during the 1943-44 season), state the total number of domestic billings therefor and the total domestic film rental received thereof, broken down by exchange territories.

This answer is as of April 26, 1945:

	Fallen Sparrow		Adv. of a [illegible]		Seventh Victim		So This Is Washington		Lady Takes a Chance		[illegible]		[illegible]		Cowboy Pot Tenderfoot	
	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental
Albany	178	$13,033	157	$ 4,201	77	$ 1,930	67	$ 2,176	199	$20,559	173				105	$ 3,017
Atlanta	752	45,050	603	14,212	378	8,323	621	33,100	1,020	91,775	606				495	11,301
Boston	547	62,302	558	20,226	300	11,164	281	7,330	613	95,134	602				458	10,611
Buffalo	229	27,191	213	7,066	134	4,220	151	3,000	254	46,105	237				176	6,740
Charlotte	426	23,142	395	7,308	220	3,630	399	29,525	571	47,110	446				279	5,122
Chicago	549	47,580	477	17,218	375	13,830	323	10,393	593	97,824	529				456	18,003
Cincinnati	423	31,816	417	8,566	285	5,636	444	18,545	494	57,050	425				344	8,751
Cleveland	343	32,689	292	9,237	186	4,464	248	8,129	360	61,484	347				248	8,717
Dallas	734	45,586	745	20,607	260	4,644	554	17,746	995	101,721	717				543	14,009
Denver	213	17,072	223	5,261	97	3,181	119	2,405	328	37,469	255				150	3,912
Des Moines	186	11,263	196	4,674	95	2,233	181	3,789	231	20,775	198				139	3,488
Detroit	389	31,996	374	13,813	247	6,013	333	10,330	442	65,114	395				304	11,375
Indianapolis	290	23,318	278	7,455	185	4,794	238	18,876	328	42,902	285				238	6,734
Kansas City	352	29,052	367	8,492	153	4,434	351	10,303	457	40,797	395				250	6,748
Los Angeles	526	81,274	431	16,580	252	13,592	286	9,321	614	155,772	520				369	14,083
Memphis	249	11,574	246	4,565	151	2,971	241	14,280	299	25,324	235				184	4,391
Milwaukee	252	20,614	228	6,939	113	2,910	144	3,032	276	33,484	260				159	5,547

RKO Answers to Interrogatories in *United States v. Paramount* (Government Exhibit 93. *United States v. Paramount*)

GOVERNMENT EXHIBIT 93

ADDITIONAL INTERROGATORIES TO BE ANSWERED BY THE DEFENDANTS IN UNITED STATES v. PARAMOUNT PICTURES, INC., ET AL.

th respect to each feature listed in response to Interrogatory 1 (the name of each feature released during the tho total number of domestic billings therefor and the total domestic film rental received thereof, broken down

April 26, 1945:

	[illegible]		Adv. of a [illegible]		Seventh Victim		So This Is Washington		Lady Takes a Chance		[illegible]		[illegible]		Cowboy Pot Tenderfoot	
	[illegible]		Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental
Albany	3,033		157	$ 4,201	77	$ 1,930	67	$ 2,176	199	$20,559	173	$13,160	105	$ 3,017		
Atlanta	5,050		603	14,212	378	8,323	621	33,100	1,020	91,775	606	47,551	495	11,301		
Boston	2,302		558	20,226	300	11,164	281	7,330	613	95,134	602	110,734	458	10,611		
Buffalo	7,191		213	7,066	134	4,220	151	3,000	254	46,105	237	29,060	176	6,740		
Charlotte	3,142		395	7,308	220	3,630	399	29,525	571	47,110	446	20,108	279	5,122		
Chicago	7,580		477	17,218	375	13,830	323	10,393	593	97,824	529	61,613	456	18,003		
Cincinnati	1,816		417	8,566	285	5,636	444	18,545	494	57,050	425	34,256	344	8,751		
Cleveland	2,689		292	9,237	186	4,464	248	8,129	360	61,484	347	41,326	248	8,717		
Dallas	5,586		745	20,607	260	4,644	554	17,746	995	101,721	717	61,313	543	14,009		
Denver	7,072		223	5,261	97	3,181	119	2,405	328	37,469	255	18,592	150	3,912		
Des Moines	1,263		196	4,674	95	2,233	181	3,789	231	20,775	198	15,236	139	3,488		
Detroit	1,996		374	13,813	247	6,013	333	10,330	442	65,114	395	37,378	304	11,375		
Indianapolis	3,318		278	7,455	185	4,794	238	18,876	328	42,902	285	27,562	238	6,734		
Kansas City	9,052		367	8,492	153	4,434	351	10,303	457	40,797	395	25,986	250	6,748		
Los Angeles	1,274		431	16,580	252	13,592	286	9,321	614	155,772	520	69,667	369	14,083		
Memphis	1,574		246	4,565	151	2,971	241	14,280	299	25,324	235	13,344	184	4,391		
[illegible]	9,614		228	6,939	113	2,910	144	3,032	276	33,484	260	22,596	159	5,547		
[illegible]	5,267		364	9,402	144	2,769	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		

Atlanta	752	45,050	606	14,212	378	8,323	621	33,100	1,020	91,775	606	[illegible]	[illegible]	558	20,226	378	8,323	621	33,100	1,020	91,775	606	47,551	495	11,381
Boston	547	62,302	558	20,226	300	11,164	281	7,330	613	95,134	602	11	91	213	7,066	300	11,164	281	7,330	613	95,134	602	110,734	458	10,611
Buffalo	229	27,191	213	7,066	134	4,220	151	3,800	254	46,105	237	2	12	395	7,388	220	3,630	399	29,525	571	47,110	448	29,060	176	6,740
Charlotte	426	23,142	395	7,388	220	3,630	399	29,525	571	47,110	448	2	30	477	17,218	375	13,830	323	10,393	593	97,824	529	61,613	279	5,122
Chicago	549	47,580	477	17,218	375	13,830	323	10,393	593	97,824	529	6	6	417	8,566	285	5,636	444	18,545	494	57,050	425	34,256	456	18,003
Cincinnati	423	31,816	417	8,566	285	5,636	444	18,545	494	57,050	425	3	9	292	9,237	186	4,464	248	8,129	380	61,484	347	41,326	344	8,751
Cleveland	343	32,689	292	9,237	186	4,464	248	8,129	380	61,484	347	4	6	745	20,607	260	4,644	554	17,746	995	101,721	717	61,313	248	8,717
Dallas	734	45,586	745	20,607	260	4,644	554	17,746	995	101,721	717	6	2	223	5,261	97	3,181	119	2,405	328	37,469	255	18,592	543	14,089
Denver	213	17,072	223	5,261	97	3,181	119	2,405	328	37,469	255	1	3	196	4,674	95	2,233	181	3,789	231	20,775	198	15,236	150	3,912
Des Moines	186	11,263	196	4,674	95	2,233	181	3,789	231	20,775	198	1	6	374	13,813	247	6,013	333	10,330	442	65,114	395	37,378	139	3,488
Detroit	389	31,996	374	13,813	247	6,013	333	10,330	442	65,114	395	3	8	278	7,455	185	4,794	288	16,876	328	42,902	285	27,562	304	11,375
Indianapolis	290	23,318	278	7,455	185	4,794	288	16,876	328	42,902	285	2	2	367	8,492	153	4,432	351	10,303	457	40,797	395	25,986	238	6,734
Kansas City	352	29,052	367	8,492	153	4,432	351	10,303	457	40,797	395	2	[illegible]	431	16,580	252	13,592	286	9,321	614	155,772	520	69,667	250	6,748
Los Angeles	526	81,274	431	16,580	252	13,592	286	9,321	614	155,772	520	6	[illegible]	246	4,565	151	2,971	241	14,280	299	25,324	235	13,344	369	14,083
Memphis	249	11,574	246	4,565	151	2,971	241	14,280	299	25,324	235	1	[illegible]	228	6,939	113	2,910	144	3,032	276	33,484	260	22,596	184	4,391
Milwaukee	252	20,614	228	6,939	113	2,910	144	3,032	276	33,484	260	2	[illegible]	364	9,402	144	2,769	255	4,040	449	39,849	379	25,127	159	5,547
Minneapolis	384	25,267	364	9,402	144	2,769	255	4,040	449	39,849	379	2	[illegible]	161	6,208	86	3,649	76	3,203	198	30,228	205	27,448	260	6,237
New Haven	181	19,989	161	6,208	86	3,649	76	3,203	198	30,228	205	2	[illegible]	390	7,905	266	4,343	318	6,500	505	35,355	424	28,110	128	5,152
New Orleans	413	21,479	390	7,905	266	4,343	318	6,500	505	35,355	424	2	[illegible]	708	44,667	526	39,923	278	10,000	809	258,253	752	120,487	335	6,519
New York	805	235,811	708	44,667	526	39,923	278	10,000	809	258,253	752	12	[illegible]	242	4,568	112	2,334	260	8,086	328	27,156	279	18,384	641	42,090
Oklahoma City	273	14,012	242	4,568	112	2,334	260	8,086	328	27,156	279	1	[illegible]	166	3,492	52	1,182	138	2,659	200	17,344	173	11,365	178	3,464
Omaha	160	8,647	166	3,492	52	1,182	138	2,659	200	17,344	173	1	[illegible]	535	16,115	323	7,903	289	7,028	600	119,723	576	69,338	110	2,622
Philadelphia	566	76,859	535	16,115	323	7,903	289	7,028	600	119,723	576	6	[illegible]	376	9,663	257	6,647	294	7,641	412	56,365	379	31,545	423	12,723
Pittsburgh	374	25,369	376	9,663	257	6,647	294	7,641	412	56,365	379	3	[illegible]	169	4,426	88	2,512	129	3,415	192	23,931	190	16,114	301	7,955
Portland	179	12,611	169	4,426	88	2,512	129	3,415	192	23,931	190	1	[illegible]	419	9,402	267	5,813	409	19,220	463	40,170	411	24,997	124	3,455
St Louis	427	21,784	419	9,402	267	5,813	409	19,220	463	40,170	411	2	[illegible]	204	4,556	78	2,281	143	2,833	299	32,933	254	16,917	314	8,364
Salt Lake City	243	21,291	204	4,556	78	2,281	143	2,833	299	32,933	254	1	[illegible]	335	19,631	241	12,807	233	7,257	518	96,882	465	64,351	159	3,815
San Francisco	437	58,158	385	19,631	241	12,807	233	7,257	518	96,882	465	6	[illegible]	203	6,191	75	2,857	157	3,601	311	39,237	257	23,980	316	18,293
Seattle	208	19,701	203	6,191	75	2,857	157	3,601	311	39,237	257	2	[illegible]	123	2,393	24	398	106	1,619	114	6,296	106	4,542	181	4,832
Sioux Falls	110	3,850	123	2,393	24	398	106	1,619	114	6,296	106			376	14,789	213	8,391	305	17,332	490	91,660	456	48,586	63	1,315
Washington	432	50,152	376	14,789	213	8,391	305	17,332	490	91,660	456	4	[illegible]											331	11,108
	11,830	1,170,032	11,026	339,908	6,260	201,776	8,441	308,327	13,987	1,955,781	12,198	1,18	[illegible]	11,026	339,908	6,260	201,776	8,441	308,327	13,987	1,955,781	12,198	1,188,169	8,761	288,853

RKO Answers to Interrogatories in United States v. Paramount (Government Exhibit 93, United States v. Paramount)

	Government Circ		Cald. on Broadway		Dalcon & Carlton		Around the World		Ghost City		Cinema's Desert Legion		Restless Gun Barrel	
	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental
Albany	173	15,205	119	2,753	97	2,250	167	11,342	61	2,112	111	7,010	109	5,603
Atlanta	637	76,736	410	7,351	585	9,424	703	47,099	502	12,703	615	44,500	307	9,675
Boston	610	84,269	412	13,254	459	14,553	546	57,770	363	11,400	521	50,000	421	19,000
Buffalo	236	42,119	154	4,309	178	4,073	222	10,409	140	3,911	201	10,000	111	6,429
Charlotte	471	30,712	241	3,855	314	4,601	442	29,050	311	5,702	503	41,757	309	6,273
Chicago	550	74,265	371	10,265	442	13,040	580	49,019	365	10,179	515	51,000	455	13,119
Cincinnati	430	45,945	363	8,059	292	5,335	413	21,295	315	6,407	410	23,000	271	7,970
Cleveland	332	48,170	257	7,046	220	6,106	330	27,754	234	6,042	319	27,000	202	8,241
Dallas	778	78,190	457	7,729	425	6,567	757	54,066	528	12,000	652	66,475	659	17,190
Denver	258	26,370	135	2,786	128	2,553	243	14,221	119	3,144	207	10,950	191	4,503
Des Moines	212	17,713	199	4,377	129	2,339	213	13,453	97	2,140	197	10,954	190	4,490
Detroit	415	61,967	290	8,825	303	8,395	384	34,660	303	9,917	415	20,739	399	15,169
Indianapolis	288	33,212	243	6,538	197	4,165	293	31,515	256	6,432	333	29,000	255	6,649
Kansas City	396	33,596	276	6,166	221	3,855	383	27,190	227	5,550	379	14,109	333	8,133
Los Angeles	585	112,981	332	9,603	362	8,717	548	51,614	356	14,016	492	51,950	410	13,459
Memphis	248	19,456	100	2,549	189	2,535	248	15,218	199	3,422	282	14,350	220	4,005
Milwaukee	257	32,601	167	4,045	154	3,142	255	19,049	137	3,603	228	10,500	197	6,033
Minneapolis	411	32,964	232	4,229	178	3,170	339	19,116	164	3,311	362	11,511	316	8,479
New Haven	215	27,334	124	4,392	141	4,775	162	13,400	115	4,206	152	13,311	167	5,593
New Orleans	435	31,168	287	5,016	317	4,433	437	22,166	343	6,327	435	21,505	365	6,105
New York	776	207,560	302	11,699	597	40,047	760	89,000	650	47,495	757	90,133	659	43,063

	Dalcon & Carlton		Around the World		Ghost City		Cinema's Desert Legion		Restless Gun Barrel	
	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental
	97	2,250	167	11,342	61	2,112	111	7,010	109	5,603
	585	9,424	703	47,099	502	12,703	615	44,500	307	9,675
	459	14,553	546	57,770	363	11,400	521	50,000	421	19,000
	178	4,073	222	10,409	140	3,911	201	10,000	111	6,429
	314	4,601	442	29,050	311	5,702	503	41,757	309	6,273
	442	13,040	580	49,019	365	10,179	515	51,000	455	13,119
	292	5,335	413	21,295	315	6,407	410	23,000	271	7,970
	220	6,106	330	27,754	234	6,042	319	27,000	202	8,241
	425	6,567	757	54,066	528	12,000	652	66,475	659	17,190
	128	2,553	243	14,221	119	3,144	207	10,950	191	4,503
	129	2,339	213	13,453	97	2,140	197	10,954	190	4,490
	303	8,395	384	34,660	303	9,917	415	20,739	399	15,169
	197	4,165	293	31,515	256	6,432	333	29,000	255	6,649
	221	3,855	383	27,190	227	5,550	379	14,109	333	8,133
	362	8,717	548	51,614	356	14,016	492	51,950	410	13,459
	189	2,535	248	15,218	199	3,422	282	14,350	220	4,005
	154	3,142	255	19,049	137	3,603	228	10,500	197	6,033
	178	3,170	339	19,116	164	3,311	362	11,511	316	8,479
	141	4,775	162	13,400	115	4,206	152	13,311	167	5,593
	317	4,433	437	22,166	343	6,327	435	21,505	365	6,105
	597	40,047	760	89,000	650	47,495	757	90,133	659	43,063
							284	12,668	219	4,006

Chicago	990	74,269	374	10,269	422	13,040														
Cincinnati	430	45,945	363	8,059	292	5,535	413	31,295	315	6,407	440	459	292	5,335	413	31,295	315	6,407	440	26,903	371	7,970
Cleveland	332	40,170	257	7,046	220	6,106	350	27,754	234	6,042	350	246	220	6,106	350	27,754	234	6,042	350	27,000	282	8,224
Dallas	778	78,190	457	7,729	425	6,567	757	54,066	528	12,800	888	729	425	6,567	757	54,066	528	12,800	888	46,475	659	17,190
Denver	258	26,370	135	2,786	123	2,553	243	14,221	119	3,144	207	206	123	2,553	243	14,221	119	3,144	207	10,955	191	4,950
Des Moines	212	17,713	199	4,377	129	2,359	213	13,453	97	2,148	197	177	129	2,359	213	13,453	97	2,148	197	10,954	190	4,490
Detroit	415	61,967	290	8,825	303	8,395	384	34,660	388	9,917	415	425	303	8,395	384	34,660	388	9,917	415	20,759	359	15,169
Indianapolis	288	33,212	243	6,538	197	4,165	298	31,515	256	6,432	388	338	197	4,165	298	31,515	256	6,432	388	25,089	255	6,649
Kansas City	396	33,596	276	6,166	221	3,855	383	27,190	227	5,350	379	366	221	3,855	383	27,190	227	5,350	379	14,109	333	8,135
Los Angeles	585	112,981	332	9,603	362	8,717	548	51,614	356	14,016	492	503	362	8,717	548	51,614	356	14,016	492	31,950	410	13,459
Memphis	248	19,456	100	2,549	189	2,535	248	15,218	199	3,422	262	249	189	2,535	248	15,218	199	3,422	262	14,350	220	4,005
Milwaukee	257	32,601	167	4,045	154	3,142	255	19,049	137	3,605	228	245	154	3,142	255	19,049	137	3,605	228	10,500	197	6,033
Minneapolis	411	32,964	232	4,229	178	3,170	339	19,116	164	3,311	362	389	178	3,170	339	19,116	164	3,311	362	11,511	316	8,470
New Haven	215	27,334	124	4,392	141	4,775	162	13,400	115	4,206	152	192	141	4,775	162	13,400	115	4,206	152	13,311	167	5,593
New Orleans	435	31,168	287	5,016	317	4,433	437	22,166	343	6,327	435	426	317	4,433	437	22,166	343	6,327	435	21,505	365	6,105
New York	776	207,560	302	11,699	597	40,047	760	89,000	650	47,495	757	709	597	40,047	760	89,000	650	47,495	757	90,133	659	43,063
Oklahoma City	287	24,560	163	2,650	141	2,144	275	20,124	178	3,273	204	260	141	2,144	275	20,124	178	3,273	204	12,668	219	4,506
Omaha	177	14,304	155	3,132	90	1,548	176	9,725	60	1,448	170	132	90	1,548	176	9,725	60	1,448	170	6,860	137	3,000
Philadelphia	574	104,992	253	5,738	354	8,319	563	51,266	408	10,272	578	538	354	8,319	563	51,266	408	10,272	578	43,091	510	14,900
Pittsburgh	401	55,163	278	6,499	270	6,171	381	36,371	296	7,539	391	369	270	6,171	381	36,371	296	7,539	391	27,401	350	9,026
Portland	184	21,737	146	3,825	119	2,450	173	11,778	134	4,733	165		119	2,450	173	11,778	134	4,733	165	7,559	156	4,900
St. Louis	428	35,077	362	8,160	290	5,633	423	25,715	300	6,610	424	420	290	5,633	423	25,715	300	6,610	424	16,916	376	9,002
Salt Lake City	259	24,349	139	2,781	104	1,971	249	12,436	102	1,933	260	271	104	1,971	249	12,436	102	1,933	260	10,201	170	5,003
San Francisco	467	82,622	328	10,649	294	8,848	451	43,344	348	13,006	394	389	294	8,848	451	43,344	348	13,006	394	34,457	383	16,985
Seattle	265	35,530	208	4,540	195	4,276	253	19,771	169	4,803	235	230	195	4,276	253	19,771	169	4,803	235	10,378	219	8,046
Sioux Falls	109	5,128	100	1,574	64	824	122	4,162	24	456	113	114	64	824	122	4,162	24	456	113	2,550	104	2,059
Washington	473	83,959	253	5,991	296	8,013	445	39,237	336	10,632	490	491	296	8,013	445	39,237	336	10,632	490	46,817	315	11,880
	12,507	1,628,005	7,954	190,495	8,055	205,132	11,949	931,215	8,200	247,136	12,087	11,905	8,055	205,132	11,949	931,215	8,200	247,136	12,087	781,952	10,066	300,914

GOVERNME

	Either and Neither		Border Comedy		Passport to Destiny		Curse of Sat. People		Escape to Danger		Last
	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.
Albany	170	17,999	170	21,400	61	1,718	99	2,742	40	1,117	137
Atlanta	754	47,991	733	81,719	221	4,509	499	10,017	209	3,765	503
Boston	554	69,606	595	104,440	299	11,855	307	10,577	155	6,071	405
Buffalo	231	37,327	233	40,459	122	3,865	138	4,822	64	2,490	193
Charlotte	428	31,158	475	50,016	115	1,740	319	5,479	120	2,022	347
Chicago	514	59,123	523	94,320	174	4,241	382	13,106	165	7,313	462
Cincinnati	404	40,109	392	55,885	224	4,755	310	6,377	157	3,456	330
Cleveland	302	38,607	309	49,636	123	3,203	222	6,070	100	2,334	200
Dallas	731	55,656	765	82,577	156	2,673	156	2,673	122	2,365	555
Denver	236	18,006	218	28,047	55	1,546	111	2,723	23	968	150
Des Moines	192	17,116	188	24,164	87	1,705	96	2,436	71	1,657	149
Detroit	394	46,005	317	95,590	229	8,283	256	9,231	152	4,554	347
Indianapolis	264	27,729	268	44,255	152	3,526	224	5,932	117	2,149	247
Kansas City	355	27,483	385	43,865	74	1,339	217	5,768	68	1,457	283
Los Angeles	565	81,888	586	143,663	219	6,761	343	13,253	204	7,030	477
Memphis	217	14,875	232	19,718	92	1,391	183	4,134	54	753	206
Milwaukee	243	24,047	251	33,336	70	1,745	129	4,613	89	2,560	205
Minneapolis	290	24,567	353	31,926	143	2,511	188	5,184	125	2,492	271
New Haven	108	23,223	169	28,178	75	3,182	94	3,577	44	1,509	144
New Orleans	415	31,529	381	35,072	205	2,978					

RKO Answers to Interrogatories in United States v. Paramount (Government Exhibit 93, United States v. Paramount)

GOVERNMENT EXHIBIT 93

—	Border Command		Passport To Destiny		Curse of the People		People to Please		Attica [illegible]		Falcon Out West	
[illegible]	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental
599	170	21,400	61	1,718	99	2,742	40	1,117	137	5,203	105	2,579
591	733	81,719	221	4,509	499	10,017	209	3,765	586	19,522	502	8,991
606	595	104,440	299	11,855	307	10,577	155	6,071	485	23,591	401	13,455
527	233	40,459	122	3,865	130	4,022	64	2,490	193	8,945	109	4,956
558	475	90,016	115	1,740	319	9,479	120	2,022	347	8,043	201	4,193
623	523	94,320	171	4,241	382	13,106	165	7,313	462	24,972	412	10,915
609	392	55,085	224	4,755	310	6,377	157	3,456	330	13,295	273	5,397
607	309	49,636	123	3,203	222	6,070	100	2,334	260	12,127	231	6,110
656	765	82,577	156	2,673	156	2,673	122	2,365	555	18,082	423	6,626
606	218	28,047	55	1,546	111	2,723	23	968	150	4,710	130	2,027
616	180	24,164	87	1,705	96	2,436	71	1,657	149	4,109	124	2,398
605	317	95,590	229	8,283	256	9,231	152	4,554	347	15,630	315	8,454
629	268	44,255	152	3,526	224	5,932	117	2,149	247	9,066	210	4,300
683	385	43,865	74	1,339	217	5,768	68	1,457	283	9,702	220	4,020
688	586	143,663	219	6,761	343	13,253	204	7,030	477	28,629	326	9,275
675	232	19,718	92	1,391	183	4,134	54	753	206	6,224	168	2,593
647	251	33,336	70	1,740	129	4,613	89	2,560	205	9,104	156	3,172
667	353	31,926	143	2,511	188	5,184	125	2,492	271	12,114	234	3,771
623	169	20,178	75	3,182	94	3,577	44	1,509	144	8,634	118	4,504
649	381	35,072	205	2,978	327	5,689	149	1,528	312	9,548	268	3,877

Chicago	514	59,123	523	94,380	172	4,241	382	13,106	165	7,513	462	24,972	412	10,915	523	94,380	172	4,241	382	13,106	165	7,513	462	24,972	412	10,915
Cincinnati	404	40,109	392	55,805	224	4,756	310	6,377	157	3,456	350	13,295	279	5,337	392	55,805	224	4,755	310	6,377	157	3,456	350	13,295	279	5,337
Cleveland	302	38,607	309	49,636	123	3,203	222	6,070	100	2,334	260	12,127	231	6,110	309	49,636	123	3,203	222	6,070	100	2,334	260	12,127	231	6,110
Dallas	731	55,656	765	82,577	156	2,673	156	2,673	122	2,365	555	18,002	423	6,626	765	82,577	156	2,673	156	2,673	122	2,365	555	18,002	423	6,626
Denver	236	18,006	218	28,047	55	1,546	111	2,723	23	963	150	4,710	150	2,617	218	28,047	55	1,546	111	2,723	23	963	150	4,710	150	2,617
Des Moines	192	17,116	180	24,164	87	1,705	96	2,436	71	1,657	149	4,109	124	2,095	180	24,164	87	1,705	96	2,436	71	1,657	149	4,109	124	2,095
Detroit	394	46,005	317	95,590	229	8,283	256	9,231	152	4,554	347	15,630	315	8,454	317	95,590	229	8,283	256	9,231	152	4,554	347	15,630	315	8,454
Indianapolis	264	27,729	268	44,255	152	3,526	224	5,932	117	2,149	247	9,066	210	4,333	268	44,255	152	3,526	224	5,932	117	2,149	247	9,066	210	4,333
Kansas City	355	27,483	385	43,865	74	1,339	217	5,768	68	1,457	283	9,702	220	4,020	385	43,865	74	1,339	217	5,768	68	1,457	283	9,702	220	4,020
Los Angeles	565	81,888	586	143,663	219	6,761	343	13,253	204	7,030	477	28,629	326	9,275	586	143,663	219	6,761	343	13,253	204	7,030	477	28,629	326	9,275
Memphis	217	14,875	232	19,718	92	1,391	183	4,134	54	753	206	6,224	168	2,593	232	19,718	92	1,391	183	4,134	54	753	206	6,224	168	2,593
Milwaukee	243	24,047	251	33,336	70	1,740	129	4,613	89	2,560	205	9,104	156	3,172	251	33,336	70	1,740	129	4,613	89	2,560	205	9,104	156	3,172
Minneapolis	290	24,567	353	31,926	143	2,511	188	5,184	125	2,492	271	12,114	234	3,771	353	31,926	143	2,511	188	5,184	125	2,492	271	12,114	234	3,771
New Haven	186	23,223	169	20,178	75	3,182	94	3,577	44	1,509	144	8,634	118	4,504	169	20,178	75	3,182	94	3,577	44	1,509	144	8,634	118	4,504
New Orleans	415	31,549	381	35,072	205	2,978	327	5,689	149	1,528	312	9,548	268	3,877	381	35,072	205	2,978	327	5,689	149	1,528	312	9,548	268	3,877
New York	837	194,789	761	195,543	247	9,982	522	40,534	456	33,872	707	48,807	592	38,723	761	195,543	247	9,982	522	40,534	456	33,872	707	48,807	592	38,723
Oklahoma City	235	14,503	273	27,277	98	1,698	156	2,628	40	784	186	4,792	160	2,397	273	27,277	98	1,698	156	2,628	40	784	186	4,792	160	2,397
Omaha	158	11,928	158	17,334	84	1,574	76	1,641	34	697	125	3,009	106	1,740	158	17,334	84	1,574	76	1,641	34	697	125	3,009	106	1,740
Philadelphia	588	86,297	555	111,941	233	5,491	424	13,144	198	5,603	497	25,344	343	7,633	555	111,941	233	5,491	424	13,144	198	5,603	497	25,344	343	7,633
Pittsburgh	371	35,607	367	55,963	220	5,002	298	8,334	175	4,113	339	14,969	270	5,750	367	55,963	220	5,002	298	8,334	175	4,113	339	14,969	270	5,750
Portland	180	19,581	161	18,423	85	1,820	110	2,940	54	1,464	146	5,901	132	2,707	161	18,423	85	1,820	110	2,940	54	1,464	146	5,901	132	2,707
St. Louis	402	27,579	416	42,276	157	2,631	289	6,964	164	3,282	345	10,634	295	5,337	416	42,276	157	2,631	289	6,964	164	3,282	345	10,634	295	5,337
Salt Lake City	251	16,708	245	27,181	42	761	112	2,534	47	1,002	180	5,550	130	1,899	245	27,181	42	761	112	2,534	47	1,002	180	5,550	130	1,899
San Francisco	449	76,131	434	95,755	160	6,350	252	14,287	121	5,937	347	26,125	257	6,951	434	95,755	160	6,350	252	14,287	121	5,937	347	26,125	257	6,951
Seattle	238	24,044	260	23,362	76	2,276	159	4,480	53	1,622	207	9,728	150	4,250	260	23,362	76	2,276	159	4,480	53	1,622	207	9,728	150	4,250
Sioux Falls	97	4,381	112	5,439	38	544	23	409	27	327	79	1,774	63	775	112	5,439	38	544	23	409	27	327	79	1,774	63	775
Washington	438	58,980	448	80,524	156	3,646	324	9,727	163	4,217	32	21,597	257	6,005	448	80,524	156	3,646	324	9,727	163	4,217	32	21,597	257	6,005
	11,696	1,306,628	11,733	1,825,300	4,492	115,456	7,347	232,825	3,760	120,518	9,674	429,148	7,909	196,562	11,733	1,825,300	4,492	115,456	7,347	232,825	3,760	120,518	9,674	429,148	7,909	196,562

	Step Lively		Youth Runs Wild		Falcon in Mexico		Music in Manhattan		Hula, Etc.	
	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental	Films.	Rental
Albany	148	17,837	101	3,304	97	2,516	124	4,675	65	1,074
Atlanta	620	45,292	326	7,470	474	8,644	564	21,305	340	5,777
Boston	526	77,632	335	18,628	368	13,165	454	28,245	222	10,535
Buffalo	215	35,793	175	9,401	152	4,474	200	12,140	42	2,223
Charlotte	396	29,645	227	4,282	242	4,047	329	9,409	177	2,822
Chicago	487	72,047	396	26,219	434	14,245	414	26,149	162	3,898
Cincinnati	329	39,972	255	12,503	224	4,648	269	11,343	106	2,359
Cleveland	293	43,456	215	9,617	182	4,559	223	11,441	55	1,990
Dallas	663	60,967	409	17,561	406	6,756	622	25,188	310	4,752
Denver	167	15,882	78	4,191	119	2,608	148	6,451	54	1,505
Des Moines	159	14,592	126	6,748	120	2,236	157	8,071	63	1,527
Detroit	320	37,435	283	12,850	287	8,872	222	13,591	175	6,626
Indianapolis	242	31,278	182	9,114	188	3,968	191	8,735	115	3,177
Kansas City	325	26,267	180	6,006	191	3,790	254	9,267	65	1,236
Los Angeles	465	76,927	260	14,750	341	10,043	404	24,836	267	9,083
Memphis	194	12,303	115	2,531	137	1,995	162	5,874	75	1,131
Milwaukee	187	21,741	115	6,723	132	2,929	165	7,776	77	2,500
Minneapolis	289	26,954	213	7,621	183	3,135	295	12,623	90	1,006
New Haven	146	28,258	111	8,145	117	4,389	122	7,808	66	3,302
New Orleans	338	26,354	231	6,771	254	4,215	300	10,431	218	4,054

GOVERNMENT EXHIBIT 93

	Falcon in Mexico		Music in Manhattan		Hole, [illegible]		Pride Of [illegible]		Heavenly Days	
--1	Films.	Rental	Films.	Rental	Films.	[illegible]	Films.	Rental	Films.	Rental
4	97	2,516	124	4,675	65	1,074	137	13,400	145	9,219
0	474	8,644	564	21,305	340	5,777	589	58,309	513	26,943
3	368	13,165	454	28,245	222	10,535	490	67,506	415	33,782
1	152	4,474	200	12,140	42	2,223	215	31,467	208	17,952
2	242	4,047	329	9,409	177	2,822	364	30,069	312	11,634
9	434	14,245	414	26,149	162	3,898	471	70,344	413	45,688
3	224	4,648	269	11,343	106	2,359	296	36,773	292	20,131
7	182	4,559	223	11,441	55	1,990	244	35,838	181	18,601
1	406	6,756	622	25,188	310	4,752	672	66,433	642	29,132
1	119	2,608	148	6,451	54	1,505	154	17,252	160	12,338
8	120	2,236	157	8,071	63	1,527	169	15,076	167	15,673
0	287	8,872	222	13,591	175	6,626	141	32,621	290	21,468
4	188	3,968	191	8,735	115	3,177	211	32,449	237	29,099
6	191	3,790	254	9,267	65	1,236	270	19,750	272	19,642
0	341	10,043	404	24,836	267	9,083	388	76,172	43	43,754
1	137	1,995	162	5,874	75	1,131	178	12,906	161	8,357
3	132	2,929	165	7,776	77	2,500	197	22,293	196	16,350
1	183	3,135	295	12,623	90	1,006	305	26,411	296	17,454
5	117	4,389	122	7,808	66	3,302	133	26,475	125	10,790
1	254	4,215	300	10,431	248	4,958	326	25,995	258	13,888

Cincinnati	329	39,972	255	12,503	224	4,648	269	11,343	106	2,35	03	224	4,648	269	11,343	106	2,359	296	36,773	292	20,131
Cleveland	293	43,456	215	9,617	182	4,559	223	11,441	55	1,99	17	182	4,559	223	11,441	55	1,990	244	35,838	181	18,601
Dallas	663	60,967	409	17,561	406	6,756	622	25,188	310	4,75	61	406	6,756	622	25,188	310	4,752	672	66,433	642	29,132
Denver	167	15,882	78	4,191	119	2,608	148	6,451	54	1,50	91	119	2,608	148	6,451	54	1,505	154	17,252	160	12,338
Des Moines	159	14,592	126	6,748	120	2,236	157	8,071	63	1,527	48	120	2,236	157	8,071	63	1,527	169	15,076	167	15,673
Detroit	320	37,435	283	12,850	287	8,872	222	13,591	175	6,62	50	287	8,872	222	13,591	175	6,626	141	32,621	290	21,468
Indianapolis	242	31,278	182	9,114	188	3,968	191	8,735	115	3,17	14	188	3,968	191	8,735	115	3,177	211	32,449	237	29,099
Kansas City	325	26,267	180	6,006	191	3,790	254	9,267	65	1,23	06	191	3,790	254	9,267	65	1,236	270	19,750	272	19,642
Los Angeles	465	76,927	260	14,750	341	10,043	404	24,836	267	9,08	50	341	10,043	404	24,836	267	9,083	388	76,172	43	43,754
Memphis	194	12,303	115	2,531	137	1,995	162	5,874	75	1,131	31	137	1,995	162	5,874	75	1,131	178	12,906	161	8,357
Milwaukee	187	21,741	115	6,723	132	2,929	165	7,776	77	2,50	23	132	2,929	165	7,776	77	2,500	197	22,293	196	16,350
Minneapolis	289	26,954	213	7,621	183	3,135	295	12,623	90	1,00	21	183	3,135	295	12,623	90	1,006	305	26,411	296	17,454
New Haven	146	28,258	111	8,145	117	4,389	122	7,808	66	3,30	5	117	4,389	122	7,808	66	3,302	133	26,475	125	10,790
New Orleans	338	26,354	231	6,771	254	4,215	300	10,431	248	4,958	71	254	4,215	300	10,431	248	4,958	326	25,995	258	13,888
New York	753	239,967	597	48,968	616	41,052	813	60,70	100	3,684	58	616	41,052	813	60,70	100	3,684	724	201,920	623	44,653
Oklahoma City	203	15,652	129	2,946	126	1,911	175	6,464	102	1,739	6	126	1,911	175	6,464	102	1,739	195	16,759	189	11,692
Omaha	147	11,220	92	4,054	99	1,724	151	6,812	40	642	4	99	1,724	151	6,812	40	642	160	11,926	157	10,665
Philadelphia	534	103,537	438	24,602	304	7,089	464	25,138	228	6,352	02	304	7,089	464	25,138	228	6,352	494	87,234	472	33,836
Pittsburgh	350	45,944	286	13,061	248	5,641	307	14,610	210	4,961	1	248	5,641	307	14,610	210	4,961	323	43,107	262	21,140
Portland	133	11,253	70	2,354	109	2,259	104	6,186	57	1,534	4	1 9	2,259	104	6,186	57	1,534	120	10,989	116	6,840
St. Louis	378	28,051	282	8,446	267	4,922	322	12,874	97	2,711	6	267	4,922	322	12,874	97	2,711	319	26,552	325	20,877
Salt Lake City	201	13,025	117	6,075	102	1,752	149	5,153	71	2,145	5	102	1,752	149	5,153	71	2,145	185	19,801	175	8,116
San Francisco	353	54,926	229	13,002	245	7,831	319	21,187	184	7,656	2	245	7,831	319	21,187	184	7,656	346	53,347	315	31,206
Seattle	233	21,337	77	4,485	159	3,529	211	8,160	124	3,145	5	159	3,529	211	8,160	124	3,145	218	22,243	181	10,537
Sioux Falls	97	4,267	62	1,848	36	520	88	2,228	19	271	8	36	520	88	2,228	19	271	94	4,216	98	4,248
Washington	395	57,746	194	10,870	262	6,201	350	10,920	203	3,652	0	262	6,201	350	10,920	203	3,652	402	68,899	341	27,587
	10,286	1,347,557	6,906	335,146	7,221	195,665	9,072	454,152	4,209	111,653	6	7,221	195,665	9,072	454,152	4,209	111,653	9,530	1,284,532	8,580	653,292

	Days of Glory		Yellow Canary		Seven Days Ashore		Show Business		Gildersleeve Ghost		[illegible]		Yellow Canary		Seven Days Ashore		Show Business		Gildersleeve Ghost		Marine [illegible]		Night of Adventure	
	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	[illegible]	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental	Bkgs.	Rental
Albany	95	3,983	85	2,773	151	4,715	179	23,591	115	2,757	145	[illegible]983	85	2,773	151	4,715	179	23,591	115	2,757	145	12,950	105	3,075
Atlanta	377	13,840	419	10,700	609	15,292	7[illegible]	79,674	241	4,622	642	[illegible]840	419	10,700	609	15,292	7[illegible]	79,674	241	4,622	642	48,600	411	7,046
Boston	417	29,756	360	15,245	469	20,867	600	116,225	335	12,696	547	[illegible]756	360	15,245	469	20,867	600	116,225	335	12,696	547	86,039	304	15,093
Buffalo	149	8,668	104	4,380	193	7,112	237	38,934	164	5,090	214	[illegible]568	104	4,380	193	7,112	237	38,934	164	5,090	214	26,668	162	4,901
Charlotte	223	5,593	254	9,046	377	7,157	430	37,039	187	2,913	386	[illegible]593	254	9,046	377	7,157	430	37,039	187	2,913	386	26,834	243	3,802
Chicago	321	14,596	365	14,022	438	18,996	519	67,251	325	9,256	475	[illegible]596	365	14,022	438	18,996	519	67,251	325	9,256	475	70,167	429	16,176
Cincinnati	226	12,033	216	5,274	349	10,302	392	48,886	291	7,099	344	[illegible]033	216	5,274	349	10,302	392	48,886	291	7,099	344	38,748	257	5,248
Cleveland	220	12,795	195	5,581	289	11,855	327	64,155	236	6,548	302	[illegible]795	195	5,581	289	11,855	327	64,155	236	6,548	302	40,881	218	6,398
Dallas	410	14,655	333	9,650	657	21,140	759	70,139	296	5,689	706	[illegible]655	333	9,650	657	21,140	759	70,139	296	5,689	706	57,443	410	6,390
Denver	113	5,226	92	2,979	177	4,876	218	22,009	106	2,542	191	[illegible]026	92	2,979	177	4,876	218	22,009	106	2,542	191	17,445	115	3,035
Des Moines	119	5,566	93	2,412	174	5,041	193	20,677	162	3,815	158	[illegible]866	93	2,412	174	5,041	193	20,677	162	3,815	158	13,927	120	2,397
Detroit	279	18,134	175	5,822	339	18,982	366	51,986	277	7,692	345	[illegible]734	175	5,822	339	18,982	366	51,986	277	7,692	345	38,173	274	10,019
Indianapolis	173	7,188	171	5,329	240	8,672	263	45,989	209	5,866	224	[illegible]188	171	5,329	240	8,672	263	45,989	209	5,866	224	24,413	187	4,337
Kansas City	171	7,413	142	4,921	329	9,638	383	35,242	248	4,885	318	[illegible]413	142	4,921	329	9,638	383	35,242	248	4,885	318	23,244	202	5,103
Los Angeles	308	22,429	327	15,385	409	18,487	522	90,457	264	9,861	459	[illegible]29	327	15,385	409	18,487	522	90,457	264	9,861	459	82,970	329	13,677
Memphis	131	3,902	131	3,912	181	4,086	219	17,458	130	1,940	200	[illegible]02	131	3,912	181	4,086	219	17,458	130	1,940	200	12,073	123	1,892
Milwaukee	116	5,220	100	3,689	204	7,011	240	28,285	141	3,209	225	[illegible]20	100	3,689	204	7,011	240	28,285	141	3,209	225	21,005	131	3,431
Minneapolis	207	7,226	109	3,014	302	11,207	344	26,228	183	3,612	301	[illegible]26	109	3,014	302	11,207	344	26,228	183	3,612	301	18,943	137	2,796
New Haven	91	6,408	87	3,959	135	5,906	181	33,266	102	4,213	148	[illegible]8	87	3,959	135	5,906	181	33,266	102	4,213	148	21,288	126	5,251
New Orleans	284	20,274	244	4,319	330	7,947	376	33,414	177	3,109	343	[illegible]74	244	4,319	330	7,947	376	33,414	177	3,109	343	27,443	262	3,971

Cincinnati	226	12,033	216	5,274	349	10,302	392	48,886	291	7,099	344
Cleveland	220	12,795	195	5,581	289	11,855	327	64,155	236	6,548	307
Dallas	410	14,655	333	9,650	657	21,140	759	70,139	296	5,689	708
Denver	113	5,226	92	2,979	177	4,876	218	22,009	106	2,542	191
Des Moines	119	5,566	93	2,412	174	5,041	193	20,677	162	3,815	158
Detroit	279	18,134	175	5,822	339	18,982	366	51,986	277	7,692	345
Indianapolis	173	7,188	171	5,329	240	8,672	263	45,989	209	5,866	224
Kansas City	171	7,413	142	4,921	329	9,638	383	35,242	248	4,885	318
Los Angeles	308	22,429	327	15,385	409	18,487	522	90,457	264	9,861	456
Memphis	131	3,902	131	3,912	181	4,086	219	17,458	130	1,940	200
Milwaukee	116	5,220	100	3,689	204	7,011	240	28,285	141	3,209	225
Minneapolis	207	7,226	109	3,014	302	11,207	344	26,228	183	3,612	301
New Haven	91	6,408	87	3,959	135	5,906	181	33,266	102	4,213	148
New Orleans	284	20,274	244	4,319	330	7,947	376	33,414	177	3,109	345
New York	616	59,351	588	43,399	697	40,338	801	267,790	499	34,548	723
Oklahoma City	143	3,680	82	1,913	224	6,684	262	23,275	108	2,049	224
Omaha	87	3,561	54	1,445	157	3,909	172	14,540	130	2,627	151
Philadelphia	440	33,263	357	13,993	492	16,980	580	122,660	255	5,832	547
Pittsburgh	326	23,624	222	5,976	321	11,670	386	62,997	262	6,217	347
Portland	64	2,241	106	2,619	148	5,003	170	14,371	126	3,332	142
St. Louis	196	7,168	193	5,562	369	10,315	402	36,081	330	7,303	37
Salt Lake City	142	4,743	77	2,586	215	6,411	243	22,210	106	2,254	19
San Francisco	273	18,258	265	15,951	356	17,526	398	79,055	228	8,791	35
Seattle	83	4,210	180	5,277	234	8,494	253	25,854	120	3,403	23
Sioux Falls	55	1,409	19	348	114	2,650	130	5,791	68	963	8
Washington	350	23,006	306	11,523	391	19,056	457	79,461	227	5,660	42
	7,225	409,419	6,451	243,004	10,070	368,325	11,780	1,703,990	6,648	190,393	10,46

593	254	9,046	377	7,157	430	37,039	187	2,913	386	26,834	243	3,802
596	365	14,022	438	18,996	519	67,251	325	9,256	475	70,167	429	16,176
033	216	5,274	349	10,302	392	48,886	291	7,099	344	38,748	257	5,248
795	195	5,581	289	11,855	327	64,155	236	6,548	302	40,881	218	6,398
555	333	9,650	657	21,140	759	70,139	296	5,689	706	57,443	410	6,390
226	92	2,979	177	4,876	218	22,009	106	2,542	191	17,445	115	3,035
566	93	2,412	174	5,041	193	20,677	162	3,815	158	13,927	120	2,397
34	175	5,822	339	18,982	366	51,986	277	7,692	345	38,173	274	10,019
88	171	5,329	240	8,672	263	45,989	209	5,866	224	24,413	187	4,337
13	142	4,921	329	9,638	383	35,242	248	4,885	318	23,244	202	5,103
29	327	15,385	409	18,487	522	90,457	264	9,861	459	82,970	329	13,677
02	131	3,912	181	4,086	219	17,458	130	1,940	200	12,073	123	1,892
20	100	3,689	204	7,011	240	28,285	141	3,209	225	21,605	131	3,431
26	109	3,014	302	11,207	344	26,228	183	3,612	301	18,943	137	2,796
08	87	3,959	135	5,906	181	33,266	102	4,213	148	21,288	126	5,251
74	244	4,319	330	7,947	376	33,414	177	3,109	343	27,443	262	3,971
51	588	43,399	697	40,338	801	267,790	499	34,548	723	179,908	631	42,461
30	82	1,913	224	6,684	262	23,275	108	2,049	222	17,330	126	2,362
51	54	1,445	157	3,909	172	14,540	130	2,627	151	10,620	75	1,608
03	357	13,993	492	16,980	580	122,660	255	5,832	543	72,980	368	9,303
24	222	5,976	321	11,670	386	62,997	262	6,217	345	38,148	259	6,097
1	106	2,619	148	5,003	170	14,371	126	3,332	141	10,838	99	2,334
8	193	5,562	369	10,315	402	36,081	330	7,303	373	28,658	249	5,485
3	77	2,586	215	6,411	243	22,210	106	2,254	192	13,424	114	2,711
8	265	15,951	356	17,526	398	79,055	228	8,791	357	55,134	289	11,591
0	180	5,277	234	8,494	253	25,854	120	3,403	235	20,561	157	4,255
9	19	348	114	2,650	130	5,791	68	963	84	3,056	30	433
6	306	11,523	391	19,056	457	78,461	227	5,660	429	56,560	270	8,850
9	6,451	243,004	10,070	368,325	11,780	1,703,990	6,648	190,393	10,468	1,217,341	7,292	222,028

RKO Answers to Interrogatories in United States v. Paramount (Government Exhibit 93, United States v. Paramount)

GOVERNMENT EXHIBIT 93

	[illegible]	[illegible]	[illegible]	[illegible]	Crew Chief (Driver)	
	Pkgs.	Parcel	Pkgs.	Parcel	Pkgs.	Parcel
Albany	133	20,440	197	21,972	144	16,518
Atlanta	790	124,782	611	64,333	213	29,324
Boston	505	150,079	549	93,205	436	83,540
Buffalo	163	54,709	210	45,657	211	37,106
Charleston	463	50,941	346	36,521	232	21,203
Chicago	462	200,210	532	83,835	470	75,781
Cincinnati	300	65,606	327	42,935	349	50,560
Cleveland	190	61,657	260	43,845	209	52,275
Dallas	550	90,029	594	63,119	339	39,704
Denver	234	30,399	213	22,742	173	18,930
Des Moines	160	22,403	163	14,064	161	17,499
Detroit	232	79,260	239	35,709	266	44,542
Indianapolis	174	41,123	215	34,649	232	30,221
Kansas City	296	56,754	278	28,274	333	29,169
Los Angeles	523	205,531	450	110,484	365	64,196
Memphis	240	24,454	196	14,076	110	7,629
Milwaukee	205	40,979	224	27,171	225	30,393
Minneapolis	299	34,040	344	29,324	342	32,193
New Haven	140	35,532	192	34,921	132	24,439
New Orleans	311	46,011	266	36,066	124	16,803
New York	769	519,339	657	406,531	689	191,316
Oklahoma City	232	28,224	253	18,101	175	15,788
Omaha	166	17,816	169	12,463	184	12,750

Cleveland	100	61,657	260	43,845	209	52,275
Dallas	550	90,029	594	63,119	339	39,704
Denver	234	38,399	213	22,742	170	18,930
Des Moines	160	22,403	163	14,064	161	17,499
Detroit	232	79,260	239	35,709	266	44,542
Indianapolis	174	41,123	215	34,649	232	30,221
Kansas City	296	56,754	276	28,274	333	29,169
Los Angeles	523	205,531	450	110,484	365	64,196
Memphis	240	24,454	196	14,076	110	7,629
Milwaukee	209	40,979	224	27,171	225	30,393
Minneapolis	299	34,040	344	29,324	342	32,193
New Haven	140	35,532	192	34,921	132	24,439
New Orleans	311	46,011	266	36,066	124	16,803
New York	769	519,339	657	406,531	689	191,316
Oklahoma City	232	28,224	253	18,101	175	15,780
Omaha	166	17,016	169	12,463	104	12,750
Philadelphia	438	150,509	493	112,463	495	62,004
Pittsburgh	307	71,671	300	43,376	372	54,526
Portland	130	27,373	149	19,945	141	16,073
St. Louis	368	48,227	368	30,602	270	23,322
Salt Lake City	230	36,064	235	26,843	201	22,266
San Francisco	339	115,229	396	74,979	224	44,945
Seattle	221	49,292	230	34,427	149	23,224
Sioux Falls	111	7,240	112	4,890	148	4,937
Washington	457	108,970	385	87,843	230	51,489
	10,149	2,751,693	10,141	1,759,419	8,457	1,245,608

Plaintiff's Schedule No. 1 in Opposition to Motion for Summary Judgment

PLAINTIFF'S SCHEDULE NO. 1

JOINT VENTURES, POOLS OR LEASES TO NATIONAL THEATRES CORPORATION OR AFFILIATES PROVIDING FOR A SHARE OF THE PROFITS ENTERED INTO BY DEFENDANTS AS DETERMINED IN UNITED STATES VS PARAMOUNT PICTURES, INC., ET AL, PRIOR TO JUNE, 1951.

SOURCES: STATEMENT OF NATIONAL THEATRES CORPORATION, JULY 1, 1947.

Decrees of the United States District Court of December 31, 1946, Section III; February 8, 1950, Section III, Judgment of June 7, 1951, Section III.

Lease Analysis Books.

Statement, Information supplied by Defendant Fox West Coast Theatres Corporation in answer to Item 3 of Plaintiff Motion for the Production of Documents. March 25, 1955.

Joint Venture and Profit Sharing Leases

Theatres Involved	Location	Other Party	Duration
Mesa Leimert	Los Angeles, Calif.	Dave Pershon	1/33 to 6/24/47
El Capitan Rialto	San Francisco, Calif.	Golden State Theatre and Realty Co.	1932 to 6/30/47
Fifth Avenue Alto	Inglewood Los Angeles, Calif.	Milt Arthur Marco Wolf	1941 to 11/16/49
El Rey Alhambra Garfield Coronet (Granada)	Alhambra, Calif.	W.J. Edwards, Jr. Harry Vinnicoff	8/20/35 to 6/30/47
Fairfax Carmel Marquis	Los Angeles, Calif.	West Coast Hollywood Gus Metzger United West Coast	8/1/35 to 6/24/47 Marquis eliminated 4/27/46
Chinese Four Star	Los Angeles, Calif.	United Artists Theatre Circuit	11/14/34 to 6/28/47
Loew's State		Loew's Inc.	
United Artists Downtown		United Artists Theatre Circuit	

9	Fifth Avenue	Inglewood	Milt Arthur	1941 to 11/16/49
10	Alto	Los Angeles, Calif.	Marco Wolf	
11	El Rey	Alhambra,	W.J. Edwards, Jr.	
12	Alhambra Garfield	Calif.	Harry Vinnicoff	8/20/35 to 6/30/47
13	Coronet (Granada)			
14	Fairfax	Los Angeles,	West Coast	8/1/35 to 6/24/47
15	Carmel Marquis	Calif.	Hollywood Gus Metzger	Marquis eliminated 4/27/46
16			United West Coast	
17	Chinese	Los Angeles,	United Artists	11/14/34 to 6/28/47
18		Calif.	Theatre Circuit	
19	Four Star		United Artists Theatre Circuit	
20				
21	Loew's State		Loew's Inc.	
22	United Artists Downtown		United Artists Theatre Circuit	
23				
24	Alhambra	Sacramento, Calif.	United Artists Theatres	1/2/34 to 6/30/47
25				
26	Hippodrome		Golden State Theatre and	
27			Realty Corp.	
28	Capitol		Mike Naify	
29	Rio Senator		J.A. Naify	
30	Golden Gate	Belvedere Gardens, Calif.	Gore Bros. United Artists	1933 to 6/24/47
31			Theatres	
32				

PLAINTIFF'S SCHEDULE NO. 1

Theatres Involved	Location	Other Party	Duration
Los Angeles	Los Angeles, Calif.	Principal Theatres Mike Rosenberg, et al Metropolitan Theatres Sherril Corwin, et al United Artists Theatre Circuit	6/15/44 25% of profits to United Artists Theatre Circuit term.6/47 Continued as to Fox West Coast Corp. to Nov. 15, 1949.
Gateway Glen	Glendale Calif.	M.A. Tauber	5/1/28 to 6/24/47
Rialto) Ritz)	So. Pasadena, Calif.	United Artists Theatres	6/12/36 to 6/10/47
Lyric) Monrovia)	Monrovia, Calif.	Simon Lazarus	
Granada Park California	Ontario, Calif.	John Anderson	9/1/33 to 6/24/47 Joint interest in Park Theatre terminated 5/31/49
Fox California Kern Rex Nile	Bakersfield, Calif.	Russell Rodgers	10/1/34 to 6/24/47
Aztec Mission. Plaza Balboa Fairmont	San Diego, Calif.	Russell Rodgers	11/30/34 to 6/24/47

		United Artists Theatre Circuit	
Gateway Glen	Glendale Calif.	M.A. Tauber	5/1/28 to 6/24/47
Rialto) Ritz)	So. Pasadena, Calif.	United Artists Theatres	6/12/36 to 6/10/47
Lyric) Monrovia)	Monrovia, Calif.	Simon Lazarus	
Granada Park California	Ontario, Calif.	John Anderson	9/1/33 to 6/24/47 Joint interest in Park Theatre terminated 5/31/49
Fox California Kern Rex Nile	Bakersfield, Calif.	Russell Rodgers	10/1/34 to 6/24/47
Aztec Mission Plaza Balboa Fairmont Egyptian North Park	San Diego, Calif.	Russell Rodgers	11/30/34 to 6/24/47
Nevada(Wigwam) Majestic Granada Reno	Reno, Nevada	Mike Naify T. and D., Jr.	8/1/28 to 6/30/47
Fox Riverside Lido Golden State De Anza	Riverside, Calif.	Roy Hunt	8/20/33 to 6/24/47 De Anza joint interest continued to 1950.
Orpheum Lyric	Yuma, Arizona	E.S. Sturdivant Principal Theatres	10/13/39 to 6/24/47

PLAINTIFF'S SCHEDULE NO. 1

Theatres Involved	Location	Other Party	Duration
Liberty Orpheum	Spokane, Wash.	Principal Theatre Co. of Wash.	4/31/35 to 6/28/47
Mt. Baker American Avalon	Bellingham, Wash.	Standard Theatre Co.	3/24/35 to 6/47
Palomar Orpheum Roosevelt Coliseum	Seattle, Wash.	J. Danz	
Rialto Strand Fox Lloyd	Marinette, Wis. Menominee, Mich.	Martin Thomas	8/1/34 to 6/30/47
Strand Oshkosh	Oshkosh, Wis.	Saxe Realty Corp.	10/3/35 to 6/30/47
Retlaw Fox Fond du Lac	Fond du Lac, Wis.	Fond du Lac Amusement Corp.	10/21/35 to 6/30/47
Star Nemo Arbo	Nevada, Mo.	Arthur Bowman	6/6/36 to 6/18/47
Paramount St. Francis State	San Francisco, Calif.	Paramount Pictures, Inc.	1/25/34 to 3/26/47
Warfield Fox		Loew's Inc.	Comm. 9/18/37 Term. 11/30/49
Paramount Mayfair	Portland, Ore.	John Hamrick	8/35 to 6/47

	Strand	Wis.		
11	Fox			
	Lloyd	Menominee,		
12		Mich.		
13	Strand	Oshkosh, Wis.	Saxe Realty Corp.	10/3/35 to 6/30/47
	Oshkosh			
14				
15	Retlaw	Fond du Lac,	Fond du Lac	10/21/35 to 6/30/47
	Fox	Wis.	Amusement Corp.	
16	Fond du Lac			
17	Star	Nevada, Mo.	Arthur Bowman	6/6/36 to 6/18/47
	Nemo			
18	Arbo			
19	Paramount	San Francisco,	Paramount Pic-	1/25/34 to 3/26/47
	St. Francis	Calif.	tures, Inc.	
20	State			
	Warfield		Loew's Inc.	Comm. 9/18/37
21	Fox			Term. 11/30/49
22	Paramount	Portland, Ore.	John Hamrick	8/35 to 6/47
	Mayfair			
23				
24	Rialto	Los Angeles,	Metropolitan	9/5/45 to 6/27/47
	Roxie	Calif.	Theatre Corp.	
25			Sherril Corwin	
			G. Metzger and	
26			Srere	
27	Fox, Hyde	Visalia, Calif.	Golden State	6/7/32 to 6/30/47
	Ritz	Hanford, Calif.	Theatre and	
28			Realty Co.	
	El Rey		Nasser Bros.	
29	State		T & D Jr.	
	Tulare	Tulare, Calif.		
30				
31	Egyptian	Long Beach,	R. Rodgers	7/16/36 to 3/30/47
	Long Beach	Calif.	A. Schaak	
32	Palace Newsreel		United Artists	
			Theatres	
	Strand		H. Vinnicoff	Share of profits and leases 1942 to 1947

Plaintiff's Schedule No. 2 in Opposition to Motion for Summary Judgment

PLAINTIFF'S SCHEDULE NO. 2

JOINT CORPORATIONS ENTERED INTO BY DEFENDANTS AS DETERMINED IN UNITED STATES VS PARAMOUNT PICTURES, INC., *et al*, PRIOR TO JUNE, 1951.

SOURCES:	STATEMENT OF NATIONAL THEATRES CORPORATION, JULY 1, 1947.
	Decrees of the United States District Court of December 31, 1946, Section III; February 8, 1950, Section III, Judgment of June 7, 1951, Section III.
	Lease Analysis Books.
	Statement, Information supplied by Defendant Fox West Coast Theatres Corporation in answer to Item 3 of Plaintiff Motion of Documents. March 25, 1955.
	Supplemental statement of National Theatres Corporation relating to basic agreement of September 1, 1933, between Fox West Coast Theatres Corporation (a 100% subsidiary of National) and United Artists Theatres of California, Ltd.

PLAINTIFF'S SCHEDULE NO. 2

JOINTLY HELD CORPORATIONS

Corporation	Theatres & Locations		Outside Parties	Duration of Interest
Anaheim Theatres, Inc.	Fox Anaheim Fox	Anaheim, Calif. Fullerton, Calif.	C.A. Caballero et al	1923 to 6/3/50
Fullerton Building Co.	Fox	Fullerton, Calif.	C.A. Caballero Harry Arthur Marco Wolf	7/24/44 to 6/13/50
Broadway Theatre Co. of Santa Ana	Broadway	Santa Ana, Calif.	C.A. Caballero Harry Arthur Marco Wolf	8/21/33 to 6/13/50
West Coast-Santa Ana Corp.	West Coast	Santa Ana, Calif.	C.A. Caballero Harry Arthur Marco Wolf	6/8/33 to 6/13/50
Fresno Theatres, Inc.	Kinema State Tower Wilson	Fresno, Calif.	Golden State Theatre and Realty Corp.	1/29/25 to 8/23/50
Golden State Theatre Corp.	Fox Ritz Fox Hyde Nevada (Wigwam) Hippodrome 50% Fresno Theatres, Inc. supra	Hanford, Calif. Visalia, Calif. Reno, Nevada Sacramento, Calif.	Golden State Theatre and Realty Corp.	8/28/24 to 8/23/50
Grauman's Greater Hollywood Theatre, Inc.	Grauman's Chinese	Hollywood, Calif.	United Artists Theatres	9/14/25 to 12/16/49
Principal Thea-				

Fresno Theatres, Inc.	Kinema State Tower Wilson	Fresno, Calif.	Golden State Theatre and Realty Corp.	1/29/25 to 8/23/50
Golden State Theatre Corp.	Fox Ritz Fox Hyde Nevada (Wigwam) Hippodrome	Hanford, Calif. Visalia, Calif. Reno, Nevada Sacramento, Calif.	Golden State Theatre and Realty Corp.	8/28/24 to 8/23/50
	50% Fresno Theatres, Inc. supra			
Grauman's Greater Hollywood Theatre, Inc.	Grauman's Chinese	Hollywood, Calif.	United Artists Theatres	9/14/25 to 12/16/49
Principal Theatres, Inc.	Banning	Banning, Calif.	Mike Rosenberg et al	8/31/29 to 11/15/49
Brawley,	Circle	Brawley, Calif.		
Monache,	Crystal	Porterville, Calif.		
Palace,	President	Los Angeles, Calif.		
	El Rey	Alhambra, Calif.		
Arlington,	Arlon			
	Grand	Tracy, Calif.		
	50% of Metropolitan Theatre Corp: Lincoln Los Angeles Million Dollar Rialto		Sherill Corwin	4/15/36 to 11/15/49
	City Hall Meralto Culver Auditorium	Culver City, Calif.		Relinq.8/43 Acquired 9/43 relinq. 8/47

PLAINTIFF'S SCHEDULE NO. 2

Corporation	Theatres & Locations		Outside Parties	Duration of Interest
Principal Theatres, Inc. (Contd.)	50% Alhambra Amusement Co.:		W.J. Edwards, Jr.	8/22/27 to 11/15/49
	Coronet (Granada)	Alhambra, Calif.		
	50% American Amusement Co.:			
	Ventura	Ventura, Calif.	Chas. Corcoran	4/14/26 to 11/15/49
	50% Broadway Theatres, Inc.:			
	Orpheum	Los Angeles, Calif.	Sherill Corwin	3/13/33 to 11/15/49
	50% Santa Maria Amusement Co.:			
	Gaiety	Santa Maria, Calif.	Harry C. Dorsey	10/10/27 to 11/15/49
	Principal Theatres Inc. of Arizona:			
	Yuma Lyric	Yuma, Arizona		3/30/34 to 11/15/49
Rubidoux Theatre Corp.	De Anza	Riverside, Calif.	Roy Hunt	8/28/38 to 11/1/50
Sacramento Theatres, Inc.	Senator Capitol Rio	Sacramento, Calif.	Mike Naify J.A. Naify	8/24/24 to 8/23/50
San Louis Obispo Theatres, Inc.	Elmo Obispo	San Louis Obispo, Calif.	Lou Rosenberg	8/14/24 to 1/1/50
Theatres Hold-	Hollywood	Hollywood, Calif.	Dave Bershon Earl Sinks	9/25/32 to after

	of Arizona.			
	Yuma Lyric	Yuma, Arizona		3/30/34 to 11/15/49
Rubidoux Theatre Corp.	De Anza	Riverside, Calif.	Roy Hunt	8/28/38 to 11/1/50
Sacramento Theatres, Inc.	Senator Capitol Rio	Sacramento, Calif.	Mike Naify J.A. Naify	8/24/24 to 8/23/50
San Louis Obispo Theatres, Inc.	Elmo Obispo	San Louis Obispo, Calif.	Lou Rosenberg	8/14/24 to 1/1/50
Theatres Holding Co.	Hollywood	Hollywood, Calif.	Dave Bershon Earl Sinks	9/25/32 to after 1950
West Coast Compton Theatre Corp.	Tower Compton	Compton, Calif.	Al Hanson	10/13/34 to 2/2/50
West Coast Wilmington Co.	Granada Avalon	Wilmington, Calif.	M.J. Rabwin	8/22/27 to 9/6/51
T. & D. Enterprises, Inc.	Approximately 60 Theatres in Northern Calif.		Mike Naify	1925 to 8/23/50
Golden State Theatre & Realty Corp.	Approximately 52 Theatres in Northern Calif.		R. McNeil	1925 to 9/23/50
Cascade Theatres Corp. and its wholly owned subsidiaries Multnomah Theatre Corp. and Rainier Theatre Corp.	Music Box Playhouse Hollywood Oriental Liberty Orpheum Rivoli	Portland, Oregon	John Hamrick	8/15/35 to 2/50

962 455

Corporation	Theatres & Locations		Outside Parties	Duration of Interest
Cascade Theatres Corp. etc (Contd.)	Fifth Ave. Paramount Coliseum Blue Mouse Music Box Music Hall Orpheum	Seattle, Wash.	John Hamrick	8/15/35 to 2/50
Valley Theatres Corp.	Grand Wausau	Wausau, Wis.	Wausau Theatre Co.	11/6/31 to 12/20/49
Fox Western Montana Corp.	American Rialto Fox Montana Park	Butte, Mont.	E.E. Harris	1/46 after 1950
Muscatine Amusement Co.	Palace Uptown	Muscatine, Iowa	Ludy Bosten	1933 after 1950
	Mainstreet	Kansas City, Mo.	R.K.O.	1942 to 1948
United West Coast Theatres Corp.	California Campus U.C. United Artists (UA)	Berkeley, Calif.		1934 to 1/1/50
	Royale United Artists (UA)	Belvedere Gardens, Calif.		
	Imperial (closed) Valley United Artists (UA)	El Centro, Calif.		

Valley Theatres Corp.	Grand Wausau	Wausau, Wis.	Wausau Theatre Co.	11/6/31 to 12/20/49
Fox Western Montana Corp.	American Rialto Fox Montana Park	Butte, Mont.	E.E. Harris	1/46 after 1950
Muscatine Amusement Co.	Palace Uptown	Muscatine, Iowa	Ludy Bosten	1933 after 1950
	Mainstreet	Kansas City, Mo.	R.K.O.	1942 to 1948
United West Coast Theatres Corp.	California Campus U.C. United Artists (UA)	Berkeley, Calif.		1934 to 1/1/50
	Royale United Artists (UA)	Belvedere Gardens, Calif.		
	Imperial (closed) Valley United Artists (UA)	El Centro, Calif.		
	Alex Capitol (UA) California (UA) Glendale	Glendale, Calif.		
	Academy Fifth Ave. Granada Inglewood Seville United Artists (UA)	Inglewood, Calif.		
	Stanford Varsity	Palo Alto, Calif.		

Corporation	Theatres & Locations		Outside Parties	Duration of Interest
United West Coast Theatres Corp. (Contd.)	Belmont Crest Egyptian Imperial Long Beach (UA) United Artists (UA) West Coast	Long Beach, Calif.		1934 to 1/1/50
	Egyptian Fairfax Four Star (UA) La Brea Ritz El Rey	Los Angeles, Calif.		
	Monrovia	Monrovia, Calif.		
	Academy Park Pasadena State Strand Tower United Artists (UA) Uptown Washington	Pasadena, Calif.		
	Rialto	So. Pasadena, Calif.		
	California Costa Grand Liberty State	Richmond, Calif.		
	California Mission Padre	San Jose, Calif.		

Long Beach (UA)	
United Artists (UA)	
West Coast	
Egyptian	Los Angeles,
Fairfax	Calif.
Four Star (UA)	
La Brea	
Ritz	
El Rey	
Monrovia	Monrovia,
	Calif.
Academy	Pasadena,
Park	Calif.
Pasadena	
State	
Strand	
Tower	
United Artists (UA)	
Uptown	
Washington	
Rialto	So. Pasadena,
	Calif.
California	Richmond,
Costa	Calif.
Grand	
Liberty	
State	
California	San Jose,
Mission	Calif.
Padre	
Hanlon	Vallejo,
Marval	Calif.
Senator	
Studio	
Strand	
Valmar	

Affidavit of Maxwell Keith in Opposition to Motion for Summary Judgment

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No. 29756
GOLDWYN CAPTION

AFFIDAVIT OF MAXWELL KEITH IN OPPOSITION TO FOX DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

State of California
City and County of San Francisco } ss.:

MAXWELL KEITH, being first duly sworn, deposes and says:

That he is an attorney at law, associated with JOSEPH L. ALIOTO, and a member of the Bar of the State of California and of this Court.

That he has been intimately acquainted with the preparation and details of this lawsuit and is familiar with the complaint, the briefs and statements of the United States in the action of *United States* v. *Paramount Pictures, Inc. et al.* He has read the Affidavit of John F. Caskey in Support of Defendants' Motion for Partial Summary Judgment.

If there is one particular *sine qua non* of the complaint and theory of the United States in *United States* v. *Para-*

mount Pictures, Inc., et al., it is in its attack on the monopoly control which each of the five major exhibition producers held on the exhibition market. Thus, the United States action may be categorized as involving these main phases: 1. *The period 1938 to November 14, 1940.* This was the pretrial and discovery stage of the action. On November 14, 1940, the United States after protracted pretrial discovery work crystallized its theories and filed its Amended and Supplemental Complaint. In so doing, it dropped every individual named in the 1938 Complaint.* 2. *The period 1940 to 1944.* During this period of time the United States attempted to have the major defendants abide by the provisions of its Consent Decree entered into with them on November 20, 1940 as one manner of settling the industry's problems. The Consent Decree provided in part that these defendants should license their pictures in groups or blocks of not more than five and provided for a system of arbitration to settle disputes on clearance and run. 3. *The period 1944 to July 1946.* The United States abandoned its conciliatory attempt of the Consent Decree and proceeded to trial. The trial court failed to find that the five major exhibitor-producers constituted a monopoly in exhibition and failed to order the divorcement of the five majors and the divestiture of the theatres. 4. *The period, July, 1946, to the entry of the various Consent Decrees with the defendants.* The United States pressed its attack on the monopoly power of the five major exhibitor-producers, of the monopoly power of each and of the necessity for divorcement

*It was customary for the United States to name members of the Board of Directors in its antitrust complaints. As John F. Caskey's affidavit indicates, Samuel Goldwyn was dropped as a named defendant early after the complaint of July 20, 1938 was filed.

and divestiture of them to the Supreme Court. It was successful in the Supreme Court and on remand to the District Court carried out its demands for findings as to the monopoly power of the five major exhibitor-defendants, as to the individual monopoly of each of the five majors and pressed for divorcement and divestiture. Accordingly, each of the five major exhibitor-producers were divorced and its theatre holdings were ordered divested.

The United States Amended and Supplemental Complaint, filed November 14, 1940, governed the trial of the action. It is based, in part, on allegations of illegal conduct in violation of Sections 1 and 2 of the Sherman Act which pertain *only* to the five major exhibitor-producers in concert (Caskey Exhibit B, Pr. 150 to 166) and which pertain to *each* of the five major exhibitor-producers alone as illegal combinations in violations of Sections 1 and 2 of the Sherman Act (Caskey Exhibit B, Pr. 170 to 177). It included the charge that *each* producer-exhibitor illegally coerced the defendant distributors and other distributors of film. (Id. Pr. 179).

The United States Amended and Supplemental Complaint includes the following allegations of illegal conduct. By way of emphasis, an asterick will be placed after each allegation discussed by the Affidavit of John F. Caskey.

1. Allegations of the United States based on violations of Sections 1 and 2 entered into by the five major exhibitor-producers *only*;

a. Effecting a division of territories in the United States. (Pr. 161, 162)

b. Acquiring and maintaining a monopoly in exhibition in cities over 100,000 and cities over 1,000,000. (Pr. 163, 164)

c. Agreeing to divide available films, without competitive negotiations in situations where they would otherwise compete. (Pr. 159)

d. Entering into joint venture or pooling agreements and profit participating agreements between themselves. (Pr. 158, 160)

e. Coercing independent exhibitors to relinquish control of theatres* or profits. (Pr. 157)

*f. Excluding independently produced films and exhibitors. (Pr. 152, 153, 154)

*g. Using first-run theatres to control film supply, run, clearance and admission prices. (Pr. 155)

h. Conditioning the licensing of films between themselves. (Pr. 151)

2. Allegations of the United States based on violation of Sections 1 and 2 of the Sherman Act entered into by each producer-exhibitor alone as separate combinations or monopolies:

*a. Preventing competition from producers, exhibitors and distributors. (Pr. 171 [sic 167], 172 [sic 168], 173 [sic 169])

b. Acquiring and maintaining a monopoly in the business of exhibition in areas serving a substantial percentage of the population of the United States. (Pr. 174 [sic 170])

c. Coercing the acquisition of theatres* or a share of the profits thereof. (Pr. 176 [sic 172])

d. Cross-licensing films distributed by each of the five. (Pr. 177 [sic 173])

e. Coercing distributors to enter into film licensing which prevented unaffiliated theatres from competing. (Pr. 179 [sic 175])

Each of these allegations are of substance to the plaintiff's action. It is entitled to claim injury as to the illegal existence of circuit monopoly power, agreements not to compete in theatres, agreements not to compete in the licensing of films, agreements to pool theatres and create an alliance of potential competitors, agreements and combinations which control, dominate, exclude and coerce every important segment of the motion picture industry. The findings of facts in said action establish that each major exhibitor-producer operated in separate market areas. Thus, each had domination in its separate market areas.

United States v. *Paramount Pictures, Inc. et al.* was an action designed to insure a free and open market to all important segments of the motion picture industry.

The briefs of the United States to the Supreme Court show an emphatic desire of the United States to have a free and open exhibition market with freedom of access to all concerned in the production, distribution and exhibition of film.

In the government's brief to the United States Supreme Court, dated January, 1948, the United States states:

At page 5: "The United States filed its original complaint in this case on July 20, 1938, and its amended and supplemental complaint on November 14, 1940. The defendants named were five separate integrated groups of corporations (the major defendants) each

engaged in producing, distributing and exhibiting motion picture films throughout the United States; two separate integrated groups of corporations, each engaged in producing and distributing motion picture films; and one corporation engaged exclusively in distribution" [United Artists].

At page 10: "At the trial, the Government abandoned its allegations that the defendants had monopolized film production by their activities as producers, but maintained that their distribution and exhibition monopolies had unreasonably restricted the economic opportunities of all independent producers and of course continued to assert the other allegations of unlawful conduct." [Underscoring added]

At page 41: "Counsel for the principal independent producers in the industry were also heard as friends of the court. They contended that since they were dependent upon the distributor-defendants for profitable distribution of their films; the decree's restrictions on distribution practices would hurt them more than it would the major defendants, whose own theatre outlets remained unaffected by the restrictions."

At page 47: "No exhibitor can operate successfully without access to a substantial number of the films of the eight distributor defendants, and no producer or distributor can succeed without access to a substantial number of the affiliated theatres of the five majors."

At page 48: "Thus, the five theatre-owning distributors have a continuing power and established pro-

clivity to discriminate in favor of each other as distributors and exhibitors."

At page 56: "... no producer or distributor can succeed without doing business with theatres of the five major defendants."

At page 61: "These major theatre circuits are so powerful, so concentrated in the larger cities and so distributed geographically that no distributor can succeed without access to the market they represent."

At page 104: "Moreover, the market control provided by these vertical combinations has constantly been abused to the prejudice of independent exhibitors, independent producers, independent distributors and the public. This persistent use of their theatres as a means of arbitrary suppression of the competition of others is itself conclusive evidence of the unlawful purpose of the major defendants' vertical integrations."

At page 133: "A prohibition against cross-licensing among the major defendants should stimulate competition in both distribution and exhibition, but it will not deprive defendants of the fruits of their conspiracy, will not effectively reduce the power of defendants to the point necessary to permit independents to compete on a fair basis, and will not remove the restraints which automatically flow from the vertical integration between each major distributor-defendant and its theatres."

The answers of United Artists Corporation and R. K. O. to the Amended and Supplemental Complaints of the United

States do not purport to speak for Samuel Goldwyn. No answer filed in the United States action spoke for the views of Samuel Goldwyn. There was a conflict of interest between officers of plaintiff's predecessors and United Artists on its stand in defending the charge of the United States. The above is established in the deposition of James A. Mulvey, President of Samuel Goldwyn Productions, pages 279-280:

"Q. A moment ago I asked you with respect to objections to things that were or were not done by United Artists in the conduct of its own business; that is, that you objected to. Do you recall what those matters were?

"A. I think there was some action contemplated by United Artists as against Paramount, but I am not clear in my recollection as to just what it was, but I remember objecting to that.

"I also objected in connection with the Government case when United Artists was made a party-defendant in the Government case and it came time to consider that matter, and I objected and strongly so with Mr. Rafferty, who may have been a member of the board at the time or, if not, he was counsel to the company, as to what to do in connection with the Government case."

Mr. Goldwyn's and Mr. Mulvey's views in the *Paramount* case were represented by the Society of Independent Motion Picture Producers (hereinafter called S. I. M. P. P.). This group, composed of independent motion picture producers, including Samuel Goldwyn, hired

eminent counsel to advance its cause. These included Morris L. Ernst, Lloyd Wright, James M. Barnes, Harold H. Stern, and Harriet F. Pilpel. S. I. M. P. P., speaking for Samuel Goldwyn and others, filed a brief submitted as *amicus curiae* in support of the Government's application for injunction against unreasonable clearance in the United States District Court for the Southern District of New York. It filed leave for and a Petition and Brief as Amicus Curiae in this Court. It filed a Brief as Amicus Curiae in the United States Supreme Court and sought leave to file as Intervenors.

The briefs of S. I. M. P. P. and its views were apparently supported by the United States.

Statement of S. I. M. P. P. in the Supreme Court	*Statement of United States in the Supreme Court*
At page 17: "The most important item of evidence in the record which must be considered in connection with the Court's hypothesis and which was completely overlooked, thereby rendering the Court's conclusion fallacious, is that the 3,137 theatres owned by the five major defendants produce more than 45 per cent of the United States gross return on a given picture.**"	At page 19: "In the year 1945, the five major defendants had interests in 3,137 of the 18,076 motion picture theatres in the United States, or about 17.35 per cent. (Fdg. 118, R. 3684) These 3,137 theatres, however, paid 45 per cent of the domestic film rental received by all eight distributors, as compared with less than 5 per cent of such rental paid by the five largest unaffiliated theatre circuits. (Fdg. 126, R. 3685)"
At page 19: "In this way, each defendant will be enabled to rid itself of its inferior pictures by	At pages 91-92: "First, to the extent that the motion picture requirements of each group of

Statement of S. I. M. P. P. in the Supreme Court (Cont'd)

licensing to the defendants' own theatres; in this way, each of the five defendants is given a 'cushion', a guarantee against the risks of competition, and an enormous strategic advantage over all other producers. The president of R. K. O., Mr. N. P. Rathvon, in his frank testimony amply demonstrates the accuracy of these conclusions when he testified (Record page 1622; Sten. Minutes 2224):

"'In the first place, if you have got an unsuccessful picture, your first-run outlets that you control let it get into the flow of distribution and that is very important, because if you have an unsuccessful picture and your first-run exhibitor has no responsibility to you, you are foreclosed from that whole territory if you fail to get it into first-run theatres. So it is, for your unsuccessful pictures, it gives you a chance to get some revenue back because you forced it into the flow of distribution.' (Italics added)

"The word 'forced' used by Rathvon in his testimony is no accident. It means the power obtained by R. K. O. through its ownership or control of 103 choice theatres in the United States.[6]"

Statement of United States in the Supreme Court (Cont'd)

affiliated theatres are satisfied by the pictures of its distributor, all other distributors are excluded from that important segment of the market. Second, wherever a distributor has theatres, the other exhibitors are excluded from the opportunity of licensing the exclusive runs reserved for the distributor's own theatres. As the defendants' witness Rathvon, president of RKO, frankly stated with reference to his company's ownership of key first-run theatres:

"* * * if you have got an unsuccessful picture, your first-run outlets that you control let it get into the flow of distribution * * * it gives you a chance to get some revenue back because you forced it into the flow of distribution (R. 1622)."

Affidavit of Maxwell Keith in Opposition to Motion for Summary Judgment

Statement of S. I. M. P. P. in the Supreme Court (Cont'd)

At page 24: "No independent can out-bid the concentrated economic power represented by any one of the defendants who, too, will be bidding for product for its theatres and the independent exhibitor may thus well be frozen out of the market. Furthermore, in permitting the defendants to retain their theatres, they are given a ready market for their own pictures and a source of supply which the independent exhibitor does not have."

Statement of United States in the Supreme Court (Cont'd)

At pages 68-69: "The principle independent producers have objected that the decree will not help them because their access to the important segment of the market represented by the affiliated theatres will continue to be controlled by their competitors (Brief for Society of Independent Motion Picture Producers, pp. 16-21), and further that the decree actually adds injury by subjecting them to the same prohibitions as the defendants (since "they are compelled by economic necessity to distribute through the defendants", while at the same time leaving the defendants free of those prohibitions in the operation of their own theatres (Id. at pp. 31-33)."

In discussing the briefs submitted by S. I. M. P. P. to the District Court at a hearing dated October 27, 1946, Mr. Wright, representing the United States in *United States v. Paramount Pictures, Inc. et al.*, stated as follows:

> "The two briefs submitted on behalf of independent producers are confined to independent producers who market their films through the distributor-defendants. They are independent in the sense that they finance their own productions, but it seems clear from the allegations of their petitions and briefs that they have no independence whatsoever when it comes to securing an outlet for their films.

"All of them insist that it is economically impossible for them to release their pictures through any other distributor than a defendant. All of the exhibitor briefs insist that independent exhibitors cannot operate without the films distributed by these defendants.

"In fact, most of what is said in the briefs of all those groups is based upon the proposition that the defendants today collectively enjoy an effective monopoly over the distribution of films in this country.

"As to this point, there is no possible ground for disagreement between them and the Government. However, there is a sharp divergence between some of their views and ours as to what the Court should do in such a situation. As we understand the Sherman Act, the Court has no choice, when confronted with a monopoly of this character, but to adopt effective measures to destroy that monopoly."

There is no question that the trial court in the *Paramount* case considered Samuel Goldwyn as an independent producer (Findings Nos. 54, 101)

"54. During the entire period in question United Artists Corporation distributed photoplays in the United States of America that were produced by David O. Selznick, Mary Pickford, Charles Chaplin, Hunt Stromberg, William Cagney, Bing Crosby, Edward Small, Sol Lesser, Lester Cowan, Jack Skirball, Benedict Bogeaus, Seymour Nebenzal, Jules Levey, David Loew, Arnold Pressburger, Charles R. Rogers, Andrew Stone, Constance Bennett, Howard Hughes, Preston Sturgis,

Affidavit of Maxwell Keith in Opposition to Motion for Summary Judgment

J. Arthur Rank, Edward Golden, or corporations with which the aforesaid individuals were associated and other independent producers."

"101. Continuously since its organization RKO has distributed features for independent producers. The particular independent producers whose features have been distributed by RKO have varied from time to time. In the nine seasons ending 1943-44, 19.8% of the features distributed by RKO were independently produced, and 28.4% of RKO's gross receipts from domestic licenses of features was derived from such independently produced features."

Samuel Goldwyn never had domination or control over the United Artists Corporation. On April 11, 1939, he brought suit against this corporation concerning actions taken by the majority stockholders which were derogatory to his rights. In this action he was represented by Dwight, Harris, Koegel & Caskey.

In the latter part of 1940, Samuel Goldwyn filed actions in the District Court of New York. The verified complaint stated in part:

"Forty-second: * * * That from on or about July 22, 1936, the date of the inception of the said agreement, Exhibit "B", down to the date of the commencement of this action, defendant substantially violated the terms and provisions of said agreement, and more particularly said paragraph "Tenth" thereof, and caused the plaintiff Samuel Goldwyn, Inc. great damage, in that defendant failed and neglected to devote its best efforts

to the proper distribution and disposition of the photoplays of the plaintiff Samuel Goldwyn, Inc., in the following respects:

"(a) Defendant failed and neglected to use its best efforts to make the distribution of said photoplays as complete and efficient as possible so that the gross returns thereof should be as large as possible:

"(b) Defendant failed and neglected to use its best efforts to procure the best and highest prices obtainable on such distribution; and

"(c) Defendant used the said photoplays to influence the licensing, leasing or other disposition of photoplays of other producers distributed by the defendant."

Thus, during the *Paramount* action, Samuel Goldwyn, as a minority stockholder, took a stand at variance with the majority of United Artists Corporation. He ceased to have any interest in the company in March, 1941.

Samuel Goldwyn never had domination or control over RKO Radio Pictures, Inc. or RKO Corporation, or any proprietary interest in this firm. He is an independent motion picture producer who desires a free and open exhibition market and who has consistently opposed circuit monopoly power.

The present action was filed three months after the Findings of Fact and Conclusions of Law on Remand were filed in the United States action.

The combinations, conspiracies and illegal acts and activities of the defendants determined in *United States* v. *Paramount Pictures, Inc. et al.* had the effect of compelling

Affidavit of Maxwell Keith in Opposition to Motion for Summary Judgment

plaintiff and its assignors by reason of business necessity or economic duress to sell pictures to each of the five largest circuits of theatres, of destroying a free and open market to plaintiff and its assignors and of causing grievous injury to plaintiff and its assignors. Plaintiff and its assignors contend that they were not the beneficiaries of a system which destroyed a competitive market. Counsel for plaintiff is prepared to prove these facts to the satisfaction of the trier of fact.

(Sworn to by Maxwell Keith on July 20, 1956.)

Affidavit of James A. Mulvey in Opposition to Motion for Summary Judgment

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA,

SOUTHERN DIVISION

[SAME TITLE]

STATE OF NEW YORK }
CITY OF NEW YORK } ss.:

JAMES A. MULVEY, after being first duly sworn, deposes and says:

That he is the President of the plaintiff in the above-entitled action, and at all times an officer of the predecessor companies to plaintiff. Plaintiff's revenue is primarily obtained from the exhibition of the motion pictures it produces.

Samuel Goldwyn has held approximately a 20 per cent interest in the common stock of United Artists Corporation (from before 1937 to March, 1941), but at no time did he have control or domination of this company. In fact, Samuel Goldwyn instituted legal action against the United Artists Corporation in 1939 because of serious disagreement with the policies of United Artists in which Goldwyn's position was overruled by the management and the ownership of the other 80 per cent stock interests in United Artists.

Affidavit of James A. Mulvey in Opposition to Motion for Summary Judgment

Especially during the period 1938-39 to 1941, the majority of shareholders and the officers and directors of United Artists were in a different and inconsistent position with Samuel Goldwyn and Goldwyn's nominee on the Board of Directors of United Artists. Accordingly, the Answer of United Artists Corporation to the Amended and Supplemental Complaint filed in *United States* v. *Paramount Pictures, Inc., et al.* was not authorized, adopted or ratified by Samuel Goldwyn as representing in any manner the views and policies of Samuel Goldwyn Inc. or affiant. As a matter of fact, affiant was at odds with the position taken by United Artists Corporation in *United States* v. *Paramount Pictures, et al.* and continually advanced the proposition that this corporation should help and aid the United States in its action against the monopoly powers in the motion picture business instead of attempting to defend the action adverse to the United States. Such attempts on his part met without success. He, personally and as Mr. Goldwyn's representative in United Artists Corporation, urged upon Edward Raftery, counsel for United Artists (Mr. Raftery was also, at times, an officer and a director of United Artists), that United Artists should not take a position antagonistic to the government in the *Paramount* case, but, in fact, should join with the government in asking the Court to grant the relief sought by the government.

Plaintiff, its predecessors, or Samuel Goldwyn have and have had no voice in the management of R. K. O. Radio Pictures, Inc., nor do they have, nor had, any stock interest in said company, nor in the profits of said company.

Samuel Goldwyn and affiant aided and assisted the United States in the case of *United States* v. *Paramount*

Affidavit of James A. Mulvey in Opposition to Motion for Summary Judgment

Pictures, Inc., et al. They supported the Society of Independent Motion Picture Producers, of which Samuel Goldwyn was a founder and leading member, in hiring counsel and in submitting briefs to the statutory court and the United States Supreme Court as friends of the United States and in support of its basic position. Morris L. Ernst, Lloyd Wright, James M. Barnes, Harold H. Stern and Harriet F. Pilpel, as attorneys for the Society were hired to attack the monopoly position of each of the five major exhibition circuits in the United States which dominated the market.

In August of 1943 affiant held a conference with Mr. Tom C. Clark, Assistant Attorney General in charge of the Antitrust Division, Department of Justice, the facts of which they correctly set forth in affiant's report of the conference to Mr. Goldwyn attached hereto and made a part hereof.

Affiant states that plaintiff suffered grievous injury as a result of the conspiracies, monopolies and combinations adjudicated in the *Paramount* litigation.

(Sworn to by James A. Mulvey on July 23, 1956.)

Affidavit of James A. Mulvey in Opposition to Motion for Summary Judgment

LETTER ANNEXED TO AFFIDAVIT OF JAMES A. MULVEY

[Letterhead of]

SAMUEL GOLDWYN INC.
729 SEVENTH AVE. NEW YORK

INTER-OFFICE COMMUNICATION

Date August 9, 1943

To Mr. Samuel Goldwyn

From James A. Mulvey

Re:

Dear Mr. Goldwyn:

On Friday last Roy Disney, John Flinn and myself met with Mr. Clark, head of the Anti-trust Division of the Department of Justice, and his assistant, at the New York Athletic Club. The meeting lasted for about two hours. We pointed out to Mr. Clark the existing practice in the industry in practically all major situations of dividing the product of all companies between the respective theatres in each situation and refusing to contract for any picture that these exhibitors have allocated to the other theatres. We explained this matter in detail with respect to Phoenix and Tuscon, Arizona, Long Beach and San Diego, California, Omaha, Atlanta and Milwaukee. I recited our experience in Atlanta where RKO sell their pictures first run to Lucas and Jenkins and how we desired to sell away from Lucas

and Jenkins and offered our picture to Loews who were not interested in buying it and as a consequence thereafter sold our picture to the small independent account, the Rialto Theatre. I told Mr. Clark of our experience of selling away from Lucas and Jenkins wherever we could and that Lucas and Jenkins refuse to buy our pictures for their own situations where no opposition exists.

I explained the Florida situation in connection with the Sparks Circuit and how it was impossible to sell Sparks any picture once we had sold away from them to the opposition; that while Sparks has about 100 runs, and we sell 5 to the opposition, we cannot get a deal for any of the remaining 95 situations.

We contended that the present consent decree has had no effect in correcting these ills but rather during the last three years it has become a general practice throughout the industry to act in collusion and by oral understanding to divide the product of all companies and in many instances the exhibitors toss for a particular picture or product.

As a consequence the producer has practically no right whatsoever to decide what theatre he wants to play a picture in.

We dwelt upon the Shine Circuit and called his attention to one spot where Shine has opposition, namely Glens Falls, where Publix is the opposition theatre and Publix refuses to buy our pictures.

Disney recited an example he has just had. He stated that while they were distributing through RKO they sold first run in Salt Lake City to an individual named Joe Lawrence and that generally throughout the Salt Lake City territory they sold the opposition to Publix. Disney stated

that he was so satisfied with the returns on his pictures released through RKO that in connection with VICTORY THROUGH AIR POWER he instructed United Artists to offer the picture to Joe Lawrence and to the other opposition spots in that territory. United Artists told him they could not offer the picture to Lawrence without first submitting it to Publix which is the regular account for United Artists' pictures and unless Publix do not wish to buy the picture and give their consent to the sale of the picture to Lawrence, they, United Artists, could not offer the picture to Lawrence.

Disney also mentioned a recent experience he has had with the Loew Company in connection with VICTORY THROUGH AIR POWER. He stated that United Artists sell all of their pictures to Loews but in this case Loews refused to buy VICTORY THROUGH AIR POWER for any of their situations and as a result the picture has been offered to RKO and RKO after much persuasion has agreed to buy it.

We discussed the decision in the "Sudekum Case" which provided, among other points, that Sudekum is enjoined and restrained from conditioning the buying of films in any competitive situation upon the condition that he be privileged to buy the films in his other situations where no opposition exists. We pointed out that Sudekum has refused to buy your pictures because of our having sold the opposition in the few situations where opposition exists and I asked Mr. Clark what action he thought might be taken in view of the Court's decision. He stated that he felt that the Government could use that example in their action with Sudekum to prove that he is not living up to the court's decision.

We talked generally about the industry and the problems that exist today and pointed out to him that throughout

the country in practically all major situations there has not been a new theatre built in over 12 years and that unless steps are taken to correct the situation when the war ends, it will be impossible for any one excepting the circuits and the present controlling exhibitors to build any new theatres. Under the present system it is not to be expected that new capital could be induced to go into this exhibition business knowing in advance that it would be impossible to acquire any decent first-run product. This condition prevails not only in the situations controlled by major circuits but also with independent exhibitors, many of whom have an understanding with their competitors as to the allocation of the product.

We went into considerable detail about many situations all along the above lines.

Mr. Clark's reaction from the very beginning was that if we could offer him the means of substantiating our contentions he would break the whole thing wide open. He was not only tremendously interested in our statements but he said for the first time he heard the very things he had been anxious to hear since he took charge of that department. He said that in his opinion, after listening to us, that the New York case would not begin to solve the problems and what he would like to do is to withdraw from the New York case entirely and start other actions elsewhere throughout the country where he felt practically certain of winning his case. He said the only possibility of bringing this whole thing to a head was for us independent producers to open up and give the department every cooperation. He stated that he had heard more from us in our one conference than he would be able to dig up in years without our aid. He stated that it was not only his personal opinion but

also that of Mr. Biddle, the Attorney General of the United States, that their job is to establish a free and open market in this business and to see to it that by so doing that, after the war, any one who wants to build a theatre can do so with the full assurance that they will have as much right as any one else to negotiate for product.

Mr. Clark inquired as to how far we would go in furnishing his department with full information and cooperation, at the same time stating that whatever information was given to his department would be treated in the utmost confidence. We responded that the main source of such information would be United Artists and that since United Artists was a defendant in the current actions, they could not be expected to give any such information. His answer to that was that he would like to talk the matter over with Loyd Wright with a view to changing that situation. Mr. Clark also offered to send as many assistants as necessary to New York immediately to gather all of this data. He suggested that we meet with his assistants within a few days. We in turn suggested that he contact Loyd Wright immediately. We tried to reach him on the phone but could not do so because of the delay in putting the call through. It was left that Loyd Wright would talk to Mr. Clark on the phone and they would work out the matter as to what further action was to be taken.

John Flinn talked to Loyd Wright late Friday night and explained the whole situation to him. I also talked to Loyd Saturday morning and Loyd was tremendously pleased with the result of our meeting.

Loyd was to talk to Mr. Clark today (Monday) and I have not heard yet the results of that discussion. I believe

that if Loyd is convinced that United Artists will no longer be a defendant in these cases, that he, Loyd, will do everything in his power to get United Artists to cooperate with the Government.

I suggest that you talk to Loyd about this whole matter and that you give it your utmost consideration.

I think that the independent producers do not realize what they are up against or what they will be up against in the near future, in the marketing of their product under the present conditions. It is all right if you have a great attraction and play ball all along the line but the producer with the average quality picture is in a position today where he must accept what the circuits wish to give him and stands no chance whatsoever of marketing his picture in a manner contrary to the wishes of the major exhibitors. As things are, the average independent producer can exist in this business only so long as the major companies want him to exist and this condition will become far more serious from a monetary standpoint after this era of great prosperity has passed.

It is my opinion that unless the Society of Independent Producers and the distributing company which handles most of their pictures, United Artists, fully supports the Government by making available all of the information and facts at their disposal, that the Society will no longer have any right to continue its existence. I hope that all of the independent producers will have the courage to face these issues and to fight them to the utmost of their ability. If we are right, and that seems to be unanimously agreed upon, then the future success or failure of the independent producers depends entirely upon what action is taken in this

matter. If they choose not to take action in this matter at this time there will come the day when their very existence as independent producers will be jeopardized.

I would like to talk to you about this entire matter after you have discussed it with Loyd Wright.

Kind regards.

Sincerely,

J. MULVEY

Statement of Fact Regarding Distribution of Goldwyn Pictures

IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

NO. 29756
GOLDWYN CAPTION

STATEMENT OF FACT REGARDING DISTRIBUTION OF GOLDWYN PICTURES—RE FIRST AND THIRD REQUEST FOR ADMISSIONS OF THE FOX DEFENDANTS, AND MOTION FOR PARTIAL SUMMARY JUDGMENT

Memoranda and statements made by defendants with respect to their motion for Partial Summary Judgment refer to the distribution agreements between plaintiff, Mr. Samuel Goldwyn and Samuel Goldwyn, Inc. with the distributors of the pictures listed in the complaint, United Artists Corporation (United Artists) and RKO Radio Pictures, Inc. (RKO). There is an attempt therein to make it appear that these pictures were committed for distribution to United Artists and RKO respectively, in advance of production during the period 1937 to 1950. Reference is made therein to the First and Third Request for Admission by the Fox defendants which relate to distribution contracts.

In order that the record be clear on this matter, plaintiff submits the following statement of facts with respect to these distribution agreements. Plaintiff thereby does herein

amplify its response to the Fox defendants' First and Third Request for Admissions.

United Artists Corporation

United Artists did not produce or own pictures. It was organized by independent producers to distribute privately financed productions of independents with special regard to high quality and prestige production. United Artists did not finance the production of any Goldwyn pictures at any time.

On July 22, 1936, United Artists Corporation and Samuel Goldwyn, Inc., a New York Corporation, entered into an agreement whereby the former agreed to deliver its productions to the latter for distribution for a ten-year period.

However, at or about the time of the commencement of the *Paramount* case, Goldwyn and the Goldwyn Company were in serious disagreement with United Artists about the Goldwyn obligation to deliver his pictures to United Artists for distribution. As appears from the affidavit of George Slaff, dated July 18, 1956, submitted in opposition to defendants' motion for summary judgment, the disagreement on this point was so serious and basic that Goldwyn and the Goldwyn Company brought legal action early in 1939 against United Artists for judgment declaring that the Goldwyn Company was not obligated to deliver its pictures to United Artists for distribution because of United Artists' failure to perform its distribution agreement and its failure to distribute properly the Goldwyn pictures. Additional actions were filed in different courts in 1940 for the same

purpose and to prevent United Artists from interfering with Goldwyn's attempts to have other companies distribute his pictures.

RKO Radio Pictures, Inc.

As was the case with United Artists, RKO did not finance the production of Goldwyn pictures at any time.

With respect to RKO, it can be stated unequivocally that the Goldwyn pictures produced during the period 1941-1950 were not committed to RKO for distribution prior to production but on the contrary their distribution was negotiated separately on a year-to-year basis while the pictures were in the process of production or already produced. Hence Goldwyn *did not* produce motion pictures for release by a major distributor (RKO) pursuant to a prior understanding or agreement with such major distributor.

All the pictures distributed by Goldwyn through RKO were distributed pursuant to specific agreements which in each instance provided that "the Producer is *now in production* of a feature photoplay" and then went on to describe further the picture referred to or recited that "the Producer has completed a feature photoplay entitled. . . .". So that the record may be complete there is set out below the various distribution agreements between the Goldwyn companies and RKO.

The several distribution agreements covering the Goldwyn pictures distributed by RKO were as follows:

Date of Agreement	Covers
5- 9-41	Distribution of The Little Foxes and one other production—later called Ball of Fire. Recites "the Producer is now in production

Statement of Fact Regarding Distribution of Goldwyn Pictures

Date of Agreement	Covers
	of a feature photoplay starring Bette Davis and presently entitled THE LITTLE FOXES, and intends to produce another feature photoplay, title and cast of which have not been determined, but which will probably star Gary Cooper", and "the Distributor desires to distribute the photoplay".
6-10-42	Distribution of THE PRIDE OF THE YANKEES and one other production—later called THEY GOT ME COVERED. Recites "the Producer is now in production of a feature photoplay starring Gary Cooper and presently entitled THE PRIDE OF THE YANKEES, and intends to produce a Bob Hope photoplay . . ." and "the Distributor desires to distribute all such photoplays".
6-14-43	Option to Goldwyn to have RKO distribute Goldwyn pictures without commitment by Goldwyn to exercise option, during three periods, namely, (a) 7-1-43 to 6-30-44, (b) 7-1-44 to 6-30-45, (c) 7-1-45 to 6-30-46. There was no commitment on Goldwyn's part to produce or deliver pictures, but the agreement merely gave Goldwyn an option to commit RKO to distribute his pictures. Goldwyn in this agreement exercises his option to have RKO distribute pictures for the period (a) above, only. At this time, Goldwyn was already in production of the photoplay UP IN

Statement of Fact Regarding Distribution of Goldwyn Pictures

Date of Agreement	Covers
	ARMS, which was later covered by a specific distribution agreement mentioned below with a separate production company.

Thereafter the following distribution agreements were entered into by RKO with separate production companies covering each picture individually.

Date of Agreement	Covers
10-13-43	Distribution of UP IN ARMS. Recites "the Producer is now in production of a feature photoplay starring Danny Kaye and presently entitled UP IN ARMS", and "the Distributor desires to distribute such photoplay".
5-29-55	Distribution of THE PRINCESS AND THE PIRATE. Recites "the Producer is now in production of a feature photoplay presently entitled THE PRINCESS AND THE PIRATE", and "the Distributor desires to distribute such photoplay".
3-23-45	Distribution of WONDER MAN. Recites "the Producer is now in production of a feature photoplay presently entitled WONDER MAN", and "the Distributor desires to distribute such photoplay".
1-31-46	Distribution of THE KID FROM BROOKLYN. Recites "the Producer is now in production of a feature photoplay presently entitled THE KID FROM BROOKLYN", and "the Distributor desires to distribute such photoplay".

Statement of Fact Regarding Distribution of Goldwyn Pictures

The remaining pictures in the complaint were produced by the plaintiff herein, Samuel Goldwyn Productions, Inc. Their distribution was covered by the following agreements:

Date of Agreement	Covers
11-11-46	Distribution of THE BEST YEARS OF OUR LIVES. Recites "the Producer has completed a feature photoplay entitled THE BEST YEARS OF OUR LIVES", and "the Distributor desires to distribute such photoplay".
2-14-47	Balance of pictures produced by Samuel Goldwyn Productions, Inc. after THE BEST YEARS OF OUR LIVES. Recites "the Producer is now in production of certain feature photoplays and may produce one or more additional photoplays which it desires to release between July 1, 1947 and June 30, 1948", and "the Distributor desires to distribute all such photoplays". This agreement further granted to Goldwyn the option to require RKO to distribute "all feature photoplays produced by the Producer which it desires to have released between . . .", and then specific options were set down with respect to the years: (a) 7-1-48 to 6-30-49, (b) 7-1-49 to 6-30-50, (c) 7-1-50 to 6-30-51, (d) 7-1-51 to 6-30-52.

It can be seen from the above that the pictures named in the complaint were not committed to RKO for distribution in advance of production, but were separately negotiated

for on a year-to-year basis, while the pictures were in production or were already completed productions. Instead of a commitment in advance of production by Goldwyn to distribute pictures through RKO, the commitment was by RKO to distribute Goldwyn's pictures at Goldwyn's option.

MAXWELL KEITH
Attorney for Plaintiff

Statement of Fact Regarding Distribution of Goldwyn Pictures

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

GEORGE SLAFF, being duly sworn, deposes and says he is the General Counsel of Samuel Goldwyn Productions, Inc., plaintiff in the above entitled action, that he has read the foregoing statement of fact regarding distribution of pictures covered in the complaint in this action, and that the same is true, to his own knowledge, information and belief, which knowledge, information and belief has been obtained from his association with the plaintiff in the above capacity for approximately ten years, his study of the records of the plaintiff and its predecessors, his examination of the distribution contracts referred to, and his discusssions with officers and employees of the plaintiff and its predecessors.

GEORGE SLAFF

Subscribed and sworn to before me this 3rd day of August, 1956.

JOHN M. MUSGRAVE
Notary Public and for said
County and State

My Commission Expires Feb. 20, 1960

Affidavit of George Slaff in Opposition to Motion for Summary Judgment

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

No. 29756
GOLDWYN CAPTION

AFFIDAVIT OF GEORGE SLAFF IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COUNTY OF ORANGE
STATE OF CALIFORNIA } ss.:

GEORGE SLAFF, being duly sworn, deposes and says:

I am a member of the Bar of the State of New York and of the State of California.

I am General Counsel to the Plaintiff in this action and have been associated with the Plaintiff in such capacity for approximately ten years.

The statements made by me in this affidavit are based upon examination and investigation made by me of records of the Plaintiff and its predecessors, of copies of minutes of various directors' and stockholders' meetings of United Artists Corporation, of copies of various pleadings and affidavits in actions by Samuel Goldwyn and Samuel Goldwyn, Inc., against United Artists Corporation in the

Affidavit of George Slaff in Opposition to Motion for Summary Judgment

period 1939-1941 and of the record and briefs in the so-called *Paramount case* (*U. S.* vs. *Paramount*, et al.) and other similar material and upon discussions with officers of the Plaintiff and its predecessor companies who have been associated with the Plaintiff and its predecessors for over 25 years. (References to the *Paramount* case record will be to the printed "Stenographer's Minutes" in that case, as "R. . . . .")

Reference is made in the moving affidavit to the relationship of Samuel Goldwyn to United Artists Corporation.

I state that during the entire period from before the date of filing of the complaint in the *Paramount* case until March of 1941 when Samuel Goldwyn disposed of his stock interest in United Artists Corporation by sale to United Artists and the Goldwyn distribution agreement with United Artists was cancelled, Samuel Goldwyn was in serious policy disagreement with the other four stockholders of United Artists Corporation. This disagreement was so intense and irreconcilable that Goldwyn and Samuel Goldwyn, Inc., (hereinafter referred to as the Goldwyn Company) brought an action in New York Supreme Court, New York County, early in 1939, against United Artists Corporation alleging that United Artists had breached its distribution contract with Goldwyn and the Goldwyn Company and that Goldwyn and the Goldwyn Company were entitled to terminate said agreement.

Mr. Richard Dwight, partner of the moving affiant herein, held Mr. Goldwyn's proxy at the series of United Artists stockholders' meetings held in January 1939 and, on behalf of Mr. Goldwyn, opposed various activities of United Artists Corporation which the other stockholders insisted on. Their law firm, which began representing Goldwyn and the Goldwyn Company at the beginning of

Affidavit of George Slaff in Opposition to Motion for Summary Judgment

1938 was on general retainer to the Goldwyn Company from November 1, 1938 to June 30, 1940, and appeared as Counsel for Goldwyn and the Goldwyn Company, in association with Mr. Max D. Steur, in the aforesaid suit against United Artists Corporation in New York Supreme Court. The nature of the Goldwyn-United Artists disagreement, as it culminated in this law suit brought by Goldwyn was summarized in a statement issued to the press by Mr. Steur on April 11, 1959 which stated in part:

> "It (United Artists Corporation) was organized to distribute pictures made by companies of the first magnitude or by artists of the first rank. Its written contracts and all its advertisements clearly so indicate. Naturally, these highest ranking producers and artists of the first magnitude were interested in having each of their pictures sold and distributed *solely and only on the merits of each picture and not coupled with any others.* That policy was implicit in every contract that was made."
>
> * * *
>
> "There is no feeling on the part of the Goldwyn corporation or Mr. Goldwyn antagonistic to United Artists. Quite the contrary, their interests lie with United Artists. There is opposition on the part of the Goldwyn corporation and Mr. Goldwyn to the present internal management *because of the abandonment of the idealistic policies to carry out which United Artists was formed. Abuses had existed in the distribution of pictures. These abuses United Artists pledged itself not to practice and if possible to completely eradicate them from the industry. It is deemed that by this action, taken by the Goldwyn*

corporation, that result may be achieved for the industry but particularly for United Artists."

This suit was transferred to the Federal Court in Delaware and subsequently still another similar suit was brought by Goldwyn and the Goldwyn Company in the United States District Court for the Southern District of New York.

Reference is made in the moving affidavit herein to the Government's amended and supplemental complaint in the *Paramount* case filed November 14, 1940. At the time when that complaint was filed Goldwyn and the Goldwyn Company were asserting in the Federal Courts in Delaware and New York that they were not bound to distribute through United Artists Corporation and were, in fact, actively negotiating for other sources of distribution. Mr. Goldwyn and the Goldwyn Company had previously served on United Artists written notice of termination of its distribution contract with United Artists. Goldwyn was asserting in one of these law suits that United Artists had, contrary to its distribution agreement with Goldwyn "used the said (Goldwyn) photoplays to influence the licensing, leasing or other disposition of photoplays produced by other producers" and was asking the Court that United Artists be enjoined from interfering with Goldwyn, or any distributor other than United Artists with whom Goldwyn might contract, in their full and unrestricted "use, disposition, distribution, exhibition or any other use of any motion picture photoplay", which Goldwyn might produce up to September 2, 1945.

By March, 1941 Mr. Goldwyn disposed of his stock interest in United Artists Corporation by sale to United Artists and the Goldwyn distribution agreement with United Artists was cancelled.

Affidavit of George Slaff in Opposition to Motion for Summary Judgment

Reference is made in the moving affidavit to an answer in the Paramount case filed on August 8, 1939, on behalf of United Artists Corporation, James Roosevelt and others. I respectfully refer the Court to the affidavit of James A. Mulvey, dated July 23, 1956, filed in opposition to defendant's motion for summary judgment with respect thereto. I also state that at a stockholders meeting of United Artists held on July 31, 1939, before the filing of the aforesaid answer of United Artists, James Roosevelt's resignation as a director of United Artists Corporation had been accepted.

The affidavit in support of this motion sets out the Government's definitions of "Major Producer" and "Independent Producer" and "Major Distributor" and "Independent Distributor". These definitions were denied by the moving affiant herein in the answer filed, and subscribed by him, on behalf of the defendants in the Paramount case, 20th Century-Fox Films Corporation and National Theatres Corporation.

In the official Department of Justice news release dated July 20, 1938, issued on the filing of the original complaint in the Paramount case the Department officially stated:

> "The control of the finer theatres by *the five major producer-exhibitors* has given them the actual power to exclude *other producers* from these markets. This in the judgment of the Department constitutes monopolistic power forbidden by the Sherman Act."

The Department went on to say:

> ". . . . The broad economic effects of the present methods and practices of the industry . . . may be

> summarized as follows: . . . *Independent producers* find it practically impossible to secure a satisfactory market for their film because of the domination by the major companies over the exhibition houses that are controlled by the major producers with whom the independent producers are trying to compete."

One of the defendants in the Paramount case, in its answer to the Amended and Supplemental Complaint, made very specific allegations on the subject of independent producers and the particular independent producer, Samuel Goldwyn, here involved. The Columbia Answer states. (Paragraph 14 of Answer, R. 3380, 3339 and 3342.)

> "Columbia has licensed and distributed its pictures in competition with the product of other *independent producers*. In other cases, it has distributed the product of *other independent producers* together with its own product, without any discrimination. Many *independent producers* have in the past five years produced some of the best pictures in the industry. For example, the following pictures have received tremendous public acclaim:
>
> SAMUEL GOLDWYN, INC.
>
> Nana
> We Live Again
> Kid Millions
> Wedding Night
> Dark Angel
> Barbary Coast

Splendor
Strike Me Pink
These Three
Wuthering Heights
They Shall Have Music
Dodsworth
Come and Get It
Beloved Enemy
Woman Chases Man
Stella Dallas
Dead End
Hurricane
Marco Polo
The Cowboy and The Lady
Real Glory
Raffles
Westerner." (Emphasis supplied)

The Findings of Fact of the Statutory Court which heard the case, dated December 31, 1946, contained the following—first with respect to United Artists and the producers who distributed through United Artists:

> "54—During the entire period in question, United Artists Corporation distributed photoplays in the United States of America that were produced by . . . . (naming 22 individuals other than Samuel Goldwyn), or corporations with which the aforesaid individuals were associated and *other independent producers.*" (70 Fed. Supp. 53, 60. Emphasis supplied.)

Affidavit of C ...ce Staff in Opposition to Motion for Summary Judgment

With respect to RKO and producers who distributed through it the Court found:

> "101—Continuously since its organization RKO has distributed features for *independent producers*. The particular *independent producers* whose features have been distributed by RKO have varied from time to time. In the nine seasons ending 1943-1944, 19.8% of the features distributed by RKO were *independently produced* and 28.4% of RKO's gross receipts from domestic licenses of features was derived from such *independently produced features*." (70 Fed. Supp. 53, 64. Emphasis supplied.)

At no time in the course of the subsequent proceedings did any party, government or defendant, including 20th Century Fox and National Theatres Corporation, ever challenge or dispute these Findings of Fact.

In the argument before the Statutory Court in October of 1946, a petition for leave to file a brief *amicus curiae*, together with an *amicus* brief, was submitted by the Society of Independent Motion Picture Producers to the Court. The petition stated:

> "1. Petitioner is a membership corporation organized under the laws of California . . . Its membership includes the following:

Constance Bennett	Mary Pickford
Benedict Bogeaus	Rainbow Productions, Inc.
William Cagney	Charles R. Rogers
Charles Chaplin	Story Productions, Inc.
Walt Disney	Edward Small
Edward A. Golden	Andrew Stone
Samuel Goldwyn	Hunt Stromberg
Sol Lesser	David O. Selznick
Jules Levey	Walter Wanger
Hal Roach	California Pictures Corporation
Nero Films, Inc.	

Affidavit of George Slaff in Opposition to Motion for Summary Judgment

"2. Petitioner was organized for the purpose of protecting and promoting the interests of independent producers of motion pictures . . .

"3. The constituent members of petitioner are engaged in the business of independently and separately producing motion pictures . . .

"4. None of the members of petitioner is a party to the instant suit. None of them exercises any actual or potential power of the motion-picture market by ownership or leasing of theatres. None of them has been accused or found guilty of engaging in any unlawful trade practices such as has been condemned by the Court in its opinion herein."

Samuel Goldwyn was one of the leading founders of the Society of Independent Motion Picture Producers and one of its most active members. In presenting the petition for leave to file, and the brief, to the Court, counsel for the Society of Independent Motion Picture Producers, Mr. Morris L. Ernst stated to the Court:

"We represent the *independent producers* who have been scarcely mentioned in the proceedings here today. This is a group of about 20 producers none of whom has the power to dominate the market either by the control of theatres or by horizontal agreements with others. They are not parties to the case; there is no accusation against them. The testimony shows that they in effect are the ingenious outside free enterprise operators who have been able to survive in a marketplace dominated either by brick and mortar or horizontal agreements." (R. 2850.)

Affidavit of George Slaff in Opposition to Motion for Summary Judgment

Mr. Goldwyn was among this "group of about 20 producers", as stated in the petition for leave to file the brief.

In addition, the Special Assistant to the Attorney General, Mr. Robert S. Wright, who was in active charge of the trial and appeal in the case at all stages stated to the Statutory Court:

> "The two briefs submitted on behalf of *independent producers* are confined to independent producers who market their films through the distributor-defendants. They are independent in the sense that they finance their own productions, but it seems clear from the allegations of their petitions and briefs that they have no independence whatsoever when it comes to securing an outlet for their films.
>
> "All of them insist that it is economically impossible for them to release their pictures through any other distributor than a defendant. All of the exhibitor briefs insist that independent exhibitors cannot operate without the films distributed by these defendants.
>
> "*In fact, most of what is said in the briefs of all those groups is based upon the proposition that the defendants today collectively enjoy an effective monopoly over the distribution of films in this country.*
>
> "*As to this point, there is no possible ground for disagreement between them and the Government.* However, there is a sharp divergence between some of their views and ours as to what the Court should do in such a situation. As we understand the Sherman Act, the Court has no choice, when confronted

> with a monopoly of this character, but to adopt effective measures to destroy that monopoly." (R. 2874-2875—emphasis supplied.)

The very first Finding of Fact of the Statutory Court, its definitions, found explicitly what constituted an independent producer:

> "Independent—A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant." (70 Fed. Supp. 53, 55.)

This Finding, like Findings 54 and 101, above referred to, was at no time in the subsequent proceedings, as far as I have been able to ascertain, challenged or disputed by the moving affiant herein or the defendants herein and in the *Paramount* case represented by him.

A brief similar to the one presented to the Statutory Court and containing the same statements of fact, was submitted by the Society of Independent Producers to the Supreme Court, and urged upon the Court the necessity of divorcement of the theatre holdings of the "Big Five" major producer-exhibitors, in order to provide a competitive exhibition market for the product of independent producers.

The moving affiant here, along with counsel for the other four major producer-exhibitor defendants opposed the filing of this brief on behalf of the Society of Independent Motion Picture Producers in the Supreme Court and filed a "Joint Brief in Reply to Briefs of *Amici Curiae*". But neither he nor they contradicted or denied the assertion made in the petition that the members of the Society of In-

dependent Motion Pictures, *including Mr. Goldwyn*, were independent producers.

On the contrary the brief of RKO in the Supreme Court stated (Page 125-126), "The ban on so-called "cross-licensing" would deprive RKO as a distributor of the income derived from the distribution of the *productions of independent producers*. Distribution of *independently produced features* has been an important part of RKO's business." (Emphasis supplied)

Similarly, leading counsel for RKO, Mr. George Leisure had previously stated to the Statutory Court in argument, (R. 3073), "We are a little like United Artists, we represent *some independents*, Walt Disney, for instance, *and Samuel Goldwyn*."

United Artists in its brief to the Supreme Court asserted:

> "United Artists Corporation was formed in 1919 (R. 1406, 1407) by Mary Pickford, Charles Chaplin, Douglas Fairbanks and D. W. Griffith as an outlet for the distribution of feature motion pictures made by *independent producers* (R. 1409)." (United Artists Brief, Page 5.)
>
> "United Artists Corporation which owns no theatres and is engaged *solely in the distribution of motion pictures produced by independent producers*. . . ." "United Artists Brief, Page 12.) (Emphasis supplied.)

In the brief filed by the Government in the Supreme Court, the Government clearly recognized the status of the members of the Society of Independent Producers, includ-

ing Mr. Goldwyn, as independent producers, and pointed out the effects of the illegal practices of the defendants on independent producers.

> "Counsel for *the principal independent producers* in the industry were also heard as friends of the Court. They contended that since they were dependent upon the distributor-defendants for profitable distribution of their films, the decree's restrictions on distribution practices would hurt them more than it would the major defendants, whose own theatre outlets remained unaffected by the restrictions (Page 41, Government Brief). (Emphasis supplied.)
>
> "The *principal independent producers* have objected that the decree will not help them because their access to the important segment of the market represented by the affiliated theatres will continue to be controlled by their competitors. (*Brief for Society of Independent Motion Picture Producers; Page 16-21*), and further that the decree actually adds injury by subjecting them to the same prohibitions as the defendants (since they are compelled by economic necessity to distribute through the defendants), while at the same time leaving the defendants free of those prohibitions in the operation of their own theatres (Id. at pp. 31-33.)" (Government Brief, Pg. 68-69.) (Emphasis supplied.)

In this brief, the Government had defined independent producers exactly as had the Court below:

> "The term 'independent' is used throughout this brief, as it was by the trial Court (R. 3660) to refer

> to 'A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant' ". (Government Brief, Pg. 6, Footnote 5.)

"This definition of independent, as used by the Government and as found by the Statutory Court was also the definition accepted and used by the Supreme Court:

> "An independent as used in these cases means a producer, distributor, or exhibitor, as the context requires, which is not a defendant in the action, or a subsidiary or affiliate of a defendant." (334 U. S. 131, 142; 92 L. Ed. 1260, 1284.)

GEORGE SLAFF
George Slaff

Subscribed and sworn to before me
this 6th day of September, 1956

JANE J. JOHNSON SEAL
Notary Public in and for the
County of Orange, State of
California.

My commission expires Jan. 28, 1960

Subject Index

	Page
Statement of the case	1
Reasons for refusing the writ	6
Summary of argument	6
Argument	8
Conclusion	19

Table of Authorities Cited

Cases	Pages
Christensen v. Paramount Pictures, Inc., 95 F.Supp. 446 (D. Utah 1950)	12
Eagle Lion Studios v. Loew's Inc., 248 F.2d 438 (2d Cir. 1957)	14
Emich Motors Corp. v. General Motors Corp., 340 U.S. 558 (1951)	13
Grengs v. Twentieth Century Fox Film Corp., 232 F.2d 325 7th Cir. 1956), cert. denied 352 U.S. 871, 77 S.Ct. 96 (1956)	12
Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 340 U.S. 211 (1951)	7, 10, 17
Leh v. General Petroleum Corp., ... F.2d ..... (9th Cir. No. 18,333, 1964, CCH Trade Cases, Para. 71,079)	11
Moore v. Mead Service Co., 340 U.S. 944 (1951) reversing 184 F.2d 338 (10th Cir. 1954)	10, 17, 18
Moore v. Mead's Fine Bread, 348 U.S. 115 (1951)	10
Phileo Corp. v. Radio Corp. of America, 186 F.Supp. 704 (N.D. Ill. 1956)	12

Pages

Samuel Goldwyn Productions, Inc. v. Fox West Coast Theatres Corp., 146 F. Supp. 905 (1956) 6

Samuel Goldwyn Productions, Inc. v. Fox West Coast Theatres Corp., 194 F. Supp. 507 (1961) 6

Steiner v. Twentieth Century Fox Film Corporation, 232 F.2d 190 (9th Cir. 1956) 11, 12

Twentieth Century Fox v. Goldwyn, 328 F.2d 190 (9th Cir. 1964) 6, 11, 12

Twentieth Century Fox Film Corp. v. United States, 339 U.S. 974, 70 S.Ct. 1032 2

Twentieth Century Fox Film Corp. v. United States, 340 U.S. 857, 71 S.Ct. 70 2

Union Carbide & Carbon Corp. v. Nisley, 300 F.2d 561 (10th Cir. 1962) 12

United Banana Co. v. United Fruit Co., 172 F.Supp. 580 (D. Conn. 1959) 12

United States v. Paramount Pictures, Inc., No. 87-273 (D.C. S.D.N.Y.) 8

United States v. Paramount Pictures, Inc., 66 F.Supp. 323 (S.D.N.Y. 1946) 2

United States v. Paramount Pictures, Inc., 70 F.Supp. 53 (S.D.N.Y. 1947) 2

United States v. Paramount Pictures, Inc., 85 F.Supp. 881 (S.D.N.Y. 1949) 2

United States v. Paramount Pictures, Inc., 334 U.S. 131, 68 S.Ct. 915 (1948) 2

William H. Rankin Co. v. Associated Bill Poster, 42 F.2d 152 (2nd Cir. 1930), cert. denied 282 U.S. 864 10

Codes

California Code of Civil Procedure:

Section 338 5

Section 340 5

Statutes

Clayton Act, Section 5 ..... 5, 9, 10, 11, 12

In the Supreme Court
OF THE
United States

October Term, 1963

No. 1133

Twentieth Century-Fox Film Corporation, et al.,
Petitioners,

vs.

Samuel Goldwyn, et al., doing business as Goldwyn Productions, a limited partnership, successors in interest to the plaintiffs Samuel Goldwyn Productions, Inc.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Petitioners are four corporations as to which respondent had judgment below in a private action under the antitrust laws. The defendants in the case fell into three groups:

(1) the "Fox" defendants (petitioners here);

(2) the "McNeil-Naify" defendants and

(3) the individual managers of these companies.

Thus far, only the case against the Fox defendants has been tried.

During the period in controversy (i.e. prior to the filing of the complaint in this case on May 16, 1950), petitioner Twentieth Century-Fox Film Corp. was one of the five major producers, distributors and exhibitors of motion pictures in the United States. National Theatres Corporation was a wholly-owned subsidiary of Twentieth Century-Fox Film Corporation and a holding company for its theatre interests. Petitioners Fox West Coast Theatres Corporation and Fox West Coast Agency Corporation were in turn, wholly-owned subsidiaries of National Theatres Corporation.

At the time the complaint in this case was filed, Twentieth Century-Fox Film Corporation and National Theatres Corporation (referred to collectively as "Fox") were named defendants in the case of *United States v. Paramount Pictures, Inc.*, No. 87-273 in the United States District Court for the Southern District of New York.[1]

Respondents are the successors in interest of Samuel Goldwyn Productions, Inc., a corporation which was plain-

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[1]Published opinions in the *Paramount* case include: *United States v. Paramount Pictures, Inc.*, 66 F.Supp. 323 (S.D.N.Y. 1946); *United States v. Paramount Pictures, Inc.*, 70 F.Supp. 53 (S.D.N.Y. 1947); *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 68 S.Ct. 915 (1948); *United States v. Paramount Pictures, Inc.*, 85 F.Supp. 881 (S.D.N.Y. 1949); *Twentieth Century Fox Film Corp. v. United States*, 339 U.S. 974, 70 S.Ct. 1032; *Twentieth Century Fox Film Corp. v. United States*, 340 U.S. 857, 71 S.Ct. 70.

tiff below. Plaintiff below was never a party to the *Paramount* case in any way, shape or form and, indeed, did not come into existence until October 1945. It was neither an exhibitor nor distributor of films. It produced films, and by force of economic necessity, distributed them through RKO Radio Pictures, Inc. a defendant in the *Paramount* case. Its predecessors in interest as to some of the films involved in its complaint (although not involved in the trial below, because of the trial Court's decision on the Statute of Limitations) were similarly neither exhibitors nor distributors but solely producers of film, some of which were distributed through United Artists Corporation, a *Paramount* case defendant, and some through RKO, a *Paramount* case defendant.

Samuel Goldwyn, the principal stockholder in Samuel Goldwyn Productions, Inc., plaintiff below, was named as a defendant in the original petition in the *Paramount* case, filed July 20, 1938. He was charged with being a Director of United Artists Corporation along with Mary Pickford, Douglas Fairbanks, Charles Chaplin and others. Samuel Goldwyn, Inc. Ltd., the company through which Samuel Goldwyn produced motion pictures at the time of the original petition in the *Paramount* case, was not named, nor, of course, was plaintiff below, Samuel Goldwyn Productions, Inc.

Samuel Goldwyn was dismissed as a defendant in the *Paramount* case on April 6, 1939. (See affidavit of petitioners' counsel filed in support of motion for partial summary judgment, p. 25c of Appendix C to Petition). The amended complaint in the *Paramount* case was filed November 14, 1940. It did not name Samuel Goldwyn (or Samuel Goldwyn Inc. Ltd.) in any capacity.

When the original Paramount complaint was filed, Mr. Goldwyn was a minority stockholder and a director of United Artists Corp. In 1941, Mr. Goldwyn terminated all interest in United Artists Corp. Samuel Goldwyn Productions, Inc. the plaintiff below, had no interest in United Artists Corp. at any time. Neither Mr. Goldwyn nor Samuel Goldwyn Productions, Inc. ever had any financial interest in or voice in the management of RKO Radio Pictures, Inc. (App. C, p. 513c).

When the original Paramount complaint was filed, Mr. Goldwyn took the position that United Artists Corp. should co-operate with the United States—a position adverse to that actually taken by United Artists Corp. (Id.)

Plaintiff's president, James A. Mulvey, actively assisted the United States in the prosecution of the *Paramount* case by furnishing Tom C. Clark, Assistant Attorney General in charge of the Antitrust Division with information on anti-competitive practices in motion picture exhibition (and particularly "splits of product") all over the United States. (App. C, pp. 514c-521c).

When the defendants in the *Paramount* case appealed to this Court in 1947, the Society of Independent Motion Picture Producers, of which Mr. Goldwyn was one of the leading founders and one of its most active members, hired counsel and appeared as *amicus curiae* in support of the position of the United States. (App. C, pp. 537c-539c).

On May 16, 1950, Samuel Goldwyn Productions, Inc. filed its complaint in this case, charging that the Fox defendants, the Naify circuit (in which Fox had a sub-

stantial financial interest) and others acting in concert with them, had violated the antitrust laws by contracting, combining and conspiring to monopolize and to restrain trade in the exhibition of motion pictures. The complaint alleged that these antitrust violations had resulted in plaintiff's receiving lower film rentals than it would have obtained under competitive conditions.

The Fox defendants answered, raising as defenses both the one year statute of limtations of California (Calif. Code Civ. Proc. 340) and the three year statute of limitations (Calif. Code Civ. Proc. 338).

The case was subsequently severed and Samuel Goldwyn Productions, Inc. prepared to go to trial against petitioners, which thereupon made the motion for partial summary judgment upon which the present petition is principally based. Petitioners urged the trial court to hold that all claims more than three years old were barred by the California three year statute of limitations. They did not in any way urge the trial court to apply the shorter California statute of limitations.

Plaintiff below did not dispute the correctness of the proposition that California's three year statute of limitations was the correct statute to apply, but urged that that statute had been tolled under Section 5 of the Clayton Act by the pendency of the *Paramount* case. Plaintiff below contended that its right of action was based in part on matters complained of in the *Paramount* case. It also contended that the findings, conclusions and decrees in the *Paramount* case were *prima facie* evidence that Twentieth Century-Fox and National Theatres Corp. had violated the antitrust laws.

Judge Murphy, in an opinion reported as *Samuel Goldwyn Productions, Inc. v. Fox West Coast Theatres Corp.*, 146 F. Supp. 905 (1956), granted petitioners' motion for partial summary judgment. As petitioners had requested, he ruled that California's three years statute of limitations was applicable to the case. He rejected the argument of plaintiff below that the statute of limitations had been tolled by the pendency of the *Paramount* case. He also held inadmissible as against Twentieth Century-Fox and National Theatres the judgments, findings of fact and decrees in the *Paramount* case.

The case thereafter went to trial before Judge Murphy, but before he could render judgment, Judge Murphy died. The case was then reassigned to Judge Harris, whose opinion holding petitioners liable for damages, costs and attorneys fees is reported as *Samuel Goldwyn Productions, Inc. v. Fox West Coast Theatres Corp.*, 194 F.Supp. 507 (1961).

All parties thereupon appealed. In a lengthy, painstaking opinion, the Ninth Circuit reviewed all aspects of the case, affirming in part and reversing in part. It is to that opinion, reported as *Twentieth Century Fox Film Corp. v. Samuel Goldwyn, et al.*, 328 F. 2d 190 (1964) that petitioners have directed their petition for a writ of certiorari.

REASONS FOR REFUSING THE WRIT

SUMMARY OF ARGUMENT

In their petition for the writ of certiorari, petitioners have set forth four questions which they ask the Court to consider on this record. Three of these questions (1,

2 and 4) are not presented by this record at all. Questions 1 and 2 assume that Samuel Goldwyn Productions, Inc., plaintiff below, was "charged with being a participant in and beneficiary of" the *Paramount* conspiracies. Question 4 assumes that Samuel Goldwyn Productions, Inc., plaintiff below, was not only so "charged" but was actually a "participant in and beneficiary of" the *Paramount* conspiracies. Neither assumption is supported by anything in the record. Both assumptions are contrary to fact. And in any event, even if the plaintiff in this case had been "charged with being", or had actually been, a participant in and beneficiary of the *Paramount* conspiracies, such circumstance would be irrelevant to this antitrust action. The doctrine of "unclean hands" or "in pari delicto" is not a defense in antitrust cases. *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211 (1951).

Petitioner's Question 3 asks whether the Ninth Circuit correctly held that petitioners cannot assign as error a ruling of the trial court which they themselves obtained over the objection of plaintiff below. Petitioners pleaded in their answer two affirmative defenses of statutes of limitation. They pleaded the California one year statute of limitations and also the California three year statute of limitations. Thereafter, without mentioning the one-year statute, petitioners made a motion for partial summary judgment *based upon the three year statute of limitations*. Their motion was granted and the case was then tried on the basis of a three-year damage period.

On appeal to the Ninth Circuit, however, petitioners assigned as error the trial court's application of the three

year statute of limitations, rather than the one year statute. The Ninth Circuit held that "defendants (petitioners) are not now in court on that issue." 328 F.2d 215. This decision is so clearly correct as to make petitioner's request for review frivolous.

It need only be added that the promised "conflict between the circuits" does not materialize as to any of the four questions posed by petitioners.

This case has been the subject of scrupulously careful review after a lengthy trial to a court which resulted in an enormous record and extensive findings of fact. There are no grounds warranting further review of any matter in the case by this Court. The petition for the writ of certiorari should be denied.

ARGUMENT

1. Petitioners state their Question 1 as follows:

"May one who is charged with being a participant in and beneficiary of a conspiracy in an antecedent Government action rely upon such Government action, under Section 5 of the Clayton Act, to suspend the statute of limitations in a private right of action?"

This question is not presented by this record. Samuel Goldwyn Productions, Inc., the corporate plaintiff in this suit, was never at any time charged with anything in the case of *United States v. Paramount Pictures, Inc.*, No. 87-273 (D.C.S.D.N.Y.), the government action which suspended the statute of limitations in this case.

Furthermore, Samuel Goldwyn, the natural person, was never charged with being a "participant in and beneficiary

of" any of the antitrust violations which the Government proved in the *Paramount* case. Samuel Goldwyn was originally a named defendant, in his capacity as a director of United Artists Corp., but was almost immediately dismissed. Mr. Goldwyn was not named in the subsequent amended *Paramount* complaint under which the case was finally tried.

Even if petitioners' Question 1 were presented by this record, there would be no grounds for review in this Court.

Petitioners' theory that Samuel Goldwyn Productions, Inc. is disentitled to the benefits of Section 5 of the Clayton Act rests upon the following syllogism:

(a) Samuel Goldwyn, the natural person, was a participant in and beneficiary of the *Paramount* violations because he was once named as a defendant, although almost immediately dismissed.

(b) Samuel Goldwyn Productions, Inc., the plaintiff below, was also a participant in and beneficiary of the *Paramount* violations because Mr. Goldwyn, its principal owner, was once named in the *Paramount* case, as a director of United Artists Corporation.

(c) Since plaintiff below was tainted by the *Paramount* violations (via a double-barreled process of "guilt by accusation" and "guilt by association") it is disentitled to the benefits of Section 5 of the Clayton Act.

Steps (a) and (b) are not only without legal support but positively offensive to reason, elementary justice and the "due process" clause of the Constitution.

Step (c) is an application of the doctrine of "in pari delicto" or "unclean hands"—as a defense to the tolling provisions of Section 5 of the Clayton Act. There is no warrant for such a doctrine in the cases; on the contrary, these defenses are not available, even on the merits as to liability, in antitrust cases. *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 214, (1951); *Moore v. Mead's Fine Bread*, 348 U.S. 115 (1951); *Moore v. Mead Service Co.*, 340 U.S. 944 (1951) reversing 184 F.2d 338 (10th Cir. 1954).

Nowhere in this record is there any support for the proposition that Samuel Goldwyn Productions, Inc., or Samuel Goldwyn himself was a "participant in" or "beneficiary of" the *Paramount* exhibition violations. On the contrary, the record shows that Samuel Goldwyn aided and assisted the Government in the prosecution of the *Paramount* case. The *Paramount* monopolization and conspiracies had produced a network of monopoly in motion picture exhibition which Mr. Goldwyn (as his SIMPP Brief shows) claimed seriously injured the exhibition revenues of the films produced by Samuel Goldwyn.

Nowhere, it should be added, do petitioners cite any case holding that the benefits of Section 5 of the Clayton Act are unavailable to one "*charged* with being a participant . . ." in a government action, much less a case showing any conflict between the circuits. There is none. The authority is to the contrary. *William H. Rankin Co. v. Associated Bill Poster*, 42 F.2d 152, 153 (2nd Cir. 1930) cert. denied, 282 U.S. 864.

Considered in the light of the facts in this case, petitioners' Question 1 is patently frivolous.

Indeed, petitioners' argument on this question is actually directed to an entirely different point. It undertakes to show that the private right of action of Samuel Goldwyn Productions, Inc. is not "based in whole or in part on any matter complained of in" the *Paramount* case. Petitioners rely principally upon two other Ninth Circuit cases: *Steiner v. Twentieth Century Fox Film Corporation,* 232 F.2d 190 (9th Cir. 1956) and *Leh v. General Petroleum Corp.,* ..... F.2d ..... (9th Cir. No. 18,333, 1964, CCH Trade Cases, Para. 71,079).

Petitioners urge that the Ninth Circuit has not followed the test of *Steiner:* "The same means must be used to achieve the same objectives of the same conspiracies by the same defendants". (232 F.2d at 196). Respondents contend that the Ninth Circuit in this case properly followed the statute which provides: ". . . the running of the statute of limitations in respect of *every* private right of action . . . based in whole *or in part* on *any matter* complained of. . . ." in a government action is suspended during the pendency of the government case. (Clayton Act, Section 5; emphasis added.)

Whatever the merits of *Steiner* (see *Twentieth Century Fox v. Goldwyn,* 328 F.2d 190, 219-220, n. 58 (9th Cir. 1964)), the fact remains that the Ninth Circuit expressly found that respondents *had* met the overly stringent *Steiner* test (328 F.2d at 219). There is no intra-circuit conflict between the *Goldwyn* and *Steiner.*

As for the *Leh* case, decided since the case at bar, petitioners' argument is best directed to a petition for certiorari to review *Leh.* In *Goldwyn,* the Ninth Circuit held that the plaintiff had met the onerously strict test of *Steiner.* In *Leh,* the Ninth Circuit held that the plaintiff

had failed to met the *Steiner* test. Respondents urged below in *Goldwyn* that the *Steiner* test is in flat contravention of the statute which it purports to interpret, and that it was wrongly decided. But since the Ninth Circuit held that the strict *Steiner* test had been met in *Goldwyn*, it cannot be properly reviewed on this record.

In *Leh*, by contrast, the Ninth Circuit found that the plaintiff had *not* met the *Steiner* test, and held that all of the plaintiff's claims were barred by the statute of limitations.

Even if it be assumed that the Ninth Circuit misapplied *Steiner* in deciding *Goldwyn*, it did no more than to bring itself into conformity with the great weight of authority which affords Section 5 of the Clayton Act a reading more in keeping with the plain meaning of the statutory language. See e.g. *Union Carbide & Carbon Corp. v. Nisley*, 300 F.2d 561, 568-571 (10th Cir. 1962); *Grengs v. Twentieth Century Fox Film Corp.*, 232 F.2d 325 (7th Cir. 1956), cert. denied 352 U.S. 871, 77 S.Ct. 96 (1956); *Philco Corp. v. Radio Corp. of America*, 186 F.Supp. 704 (N.D. Ill. 1956); *United Banana Co. v. United Fruit Co.*, 172 F.Supp. 580 (D. Conn. 1959); Cf. *Christensen v. Paramount Pictures, Inc.*, 95 F.Supp. 446, 454 (D. Utah 1950).

Petitioners' Question 1 should not be reviewed for two reasons: (1) the question, as stated, is not presented by this record and (2) The question actually presented was correctly decided.

2. Petitioners state their Question 2 as follows:

"May one who is charged with being a participant in and beneficiary of a conspiracy in an antecedent gov-

ernment action claim as a plaintiff the benefits of section 5 of the Clayton Act when he offers a final decree in a government action as prima facie evidence against his co-conspirators as establishing the conspiracy alleged in his own action?"

This question, rests upon the same false assumption as Question 1: that since Samuel Goldwyn was once named a defendant in the *Paramount* case (in his capacity as director of a distribution corporation) the corporate plaintiff below, in which Mr. Goldwyn was the principal stockholder, must be conclusively deemed to have been a participant in and beneficiary of antitrust violations complained of by the government in the *Paramount* case. The whole proposition is basically unjust and involves guilt by association as we have shown above.

Respondents have never asserted, as petitioners would seem to imply, that the matters decided in the *Paramount* case would completely prove all of the elements of their case against petitioners. Indeed, respondents proved their case for the three-year period from 1947 to 1950 by the weight of overwhelming evidence independent of the *prima facie* evidentiary effect which should have been given to matters "distinctly put in issue and directly determined" as between the United States and the Fox defendants in the *Paramount* case. (See *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558 (1951).)

The *Paramount* case proved that Twentieth Century Fox and National Theatres had violated the antitrust laws. To be sure it did not prove the amount of respondents' damages. Respondents have never contended that the

Paramount case is dispositive of all elements of their case, and the Ninth Circuit did not so hold.

What the Ninth Circuit *did* hold is that respondents may use the facts established against the Fox defendants in *Paramount* as prima facie proof of any matter relevant to their case. This decision is so clearly correct, it is difficult to imagine how it could possibly justify review.

The only semblance of an argument that petitioners can muster is that there is a case in the Second Circuit in which an independent producer of motion pictures lost: *Eagle Lion Studios v. Loew's Inc.*, 248 F.2d 438 (2d Cir. 1957). *Eagle Lion* was a close case; but for the untimely death of Judge Frank, it would have gone the other way. (See dissent of Judge Clark, 248 F.2d at 451.) This Court was equally divided (358 U.S. 100).

The *Eagle Lion* case is entirely distinguishable. The fundamental issues of fact were decided adversely to the plaintiff in that case; it did not really go off on questions of law. There, the plaintiff tried to plug the holes in its proof with the *Paramount* case, and failed. But *Eagle Lion* does not stand for the proposition that the *Paramount* decisions are irrelevant to a producer's private right of action. To the contrary, matters determined against the *Paramount* defendants were admitted in evidence in the *Eagle Lion* case. On the facts of the case, however, the Court decided that the *Paramount* decisions were just not adequate to patch the holes in plaintiff's proof.

Petitioner's Question 2 should not be reviewed for two reasons: (1) The Question, as stated, is not presented by

this record and (2) The question actually presented was clearly decided correctly.

3. Petitioners state their Question 3 as follows:

"Did petitioners waive the California one-year statute of limitations, although pleading it as a partial defense, because the district court had previously granted petitioners' motion for summary judgment based on the California three-year statute?"

Petitioners pleaded both one-year and three-year statutes of limitations. Their motion for partial summary judgment, however, asked the District Court to apply the three-year statute of limitations, and the motion was granted. Not until their appeal from an adverse judgment on plaintiff's three-year case did petitioners attempt to assign as error the very ruling which they had requested. The Ninth Circuit disposed of that point on the obvious and unassailable ground that ". . . having invited the asserted error which they contend results from application of the three-year statute, defendants are not now in court on that issue" (328 F.2d at 215).

Cases cited by petitioners are not in point. Whatever the merits of cases permitting defendants to amend their answers to plead tardy defenses prior to trial (or re-trial, as the case may be), a possible defense known to exist at the time of answering, pleaded in the answer, and intentionally abandoned prior to trial, cannot be revived and asserted for the first time on appeal from an adverse judgment.

The decision of the Ninth Circuit on this point is absolutely correct. Petitioners cite no authority whatever

fairly supporting a contrary view. There are no grounds for review of Question 3.

4. Petitioners state their Question 4 as follows:

> *"May a participant in and beneficiary of a conspiracy in an antecedent government action recover against his alleged co-conspirators?"*

In this Question, petitioners revert to the "guilt-by-accusation-plus-guilt-by-association" syllogism to prove that plaintiff below (Samuel Goldwyn Productions, Inc.) was a "participant in and beneficiary of" the *Paramount* conspiracies. As we have shown above, plaintiff below was never charged with anything whatsoever in the *Paramount* case. That should end the inquiry.

But petitioners insist that since Samuel Goldwyn, principal stockholder of plaintiff below did business with United Artists and RKO (both *Paramount* defendants), plaintiff cannot recover against Twentieth Century Fox or National Theatres Corp.

This incredible argument proceeds on the assumption that "unclean hands" or "in pari delicto" may be proven conclusively against respondents by reference to the *Paramount* case, although plaintiff below was not named as a defendant in that case, and Samuel Goldwyn, its principal stockholder, was dismissed from the case more than 10 years prior to its ultimate determination. In other words, petitioners urge that the *Paramount* decisions are *conclusive* evidence against persons *not defendants* in that case. Needless to say, petitioners have been unable to find any authority for such an extraordinary proposition.

Petitioners never offered any independent evidence that either Mr. Goldwyn or Samuel Goldwyn Productions, Inc. actually participated in or benefited from any conspiracy whatsoever. And in actuality, the facts show that Mr. Goldwyn was allied not with the *Paramount* defendants but with the Government (Appendix C, pp. 513c-521c and pp. 537c-542c). In actuality the record shows that Goldwyn fought the restrictive practices of the major circuits (R. 3980-3981, 4351-4356; Pl. Ex. 369, R. 4335-4351; 5041-5042).

Furthermore, assuming the facts were as represented by petitioners, their position would be legally untenable. Assuming that petitioners had shown as against plaintiff below that RKO was in fact violating the antitrust laws in various ways, there were allegations in the United States complaint that each producer-distributor, petitioners here, coerced defendant distributors and other distributors of films to allow it terms preventing competition from unaffiliated theatres (Appendix C, p. 235c).

There is, in short, no basis for petitioners' threshold assumption that Samuel Goldwyn or his production companies ever participated in or benefited from the *Paramount* conspiracies.

But assuming *arguendo* that plaintiff or its predecessors in interest had been implicated in a conspiracy through United Artists and RKO, there would still be no defense under defendants' arguments. This Court has repeatedly held that "pari delicto" or "unclean hands" is no defense. See *Kiefer Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211 (1950) and *Moore v. Mead's Serv-*

ice Company, 340 U.S. 944 (1951). These cases, of course, are not discussed by petitioners, and they supersede the old circuit court opinions cited by petitioners.

Question 4 is not presented by the record in this case. Neither is any question resembling it; there is absolutely no proper basis in this record for the proposition that plaintiff below ever participated in or benefited from any of the conspiracies charged in the *Paramount* case. On the contrary, the evidence showed that Samuel Goldwyn Production, Inc., plaintiff below and Samuel Goldwyn had fought the *Paramount* exhibition monopolies, and had been seriously injured by them. The trial court made elaborate findings of fact showing that plaintiff below was a victim, not a beneficiary of the Fox defendants' activities in furtherance of the *Paramount* conspiracies. After a painstaking review of those findings, the Ninth Circuit affirmed. Without attempting to challenge any of those findings as erroneous, petitioners now seek review on the basis of groundless assertions that plaintiff below participated in and benefited from the *Paramount* conspiracies. Petitioners' argument has no basis in law or in fact. The petition should be denied.

CONCLUSION

For the reasons stated above, none of the questions posed by petitioners merit consideration by this Court, and respondents respectfully urge that the petition be denied in its entirety.

Respectfully submitted,

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In the

Supreme Court of the United States

OCTOBER TERM, 1963 1964

No. [redacted] 103

TWENTIETH CENTURY-FOX FILM CORPORATION, et al.,

Petitioners,

—against—

SAMUEL GOLDWYN, et al., doing business as GOLDWYN PRODUCTIONS, a limited partnership, successors in interest to the plaintiff Samuel Goldwyn Productions, Inc.,

Respondents.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

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INDEX

	PAGE
STATEMENT	1
ARGUMENT	3
1. Goldwyn and the Goldwyn Companies Were not Independent Producers within the Meaning and Definitions of the *Paramount* Case	3
2. The Government Received No Aid or Assistance from Goldwyn in Its Prosecution of the *Paramount* Case	5
3. As a Participant in and Beneficiary of the Conspiracy Found in the *Paramount* Case Goldwyn May Not Recover Against the Petitioners Here	6
CONCLUSION	12

TABLE OF CASES

Eagle Lion Studios v. *Loew's Inc.*, 141 F. Supp. 658 (S. D. N. Y. 1956), affirmed, 248 F. 2d 438 (2nd Cir. 1957), affirmed, 358 U. S. 100	4
Eastman Co. v. *Southern Photo Co.*, 273 U. S. 359	3, 9
H. & A. Selmer, Inc. v. *Musical Instrument Exchange*, 154 F. Supp. 697 (S. D. N. Y. 1957)	12
Kentucky Rural Elec. Coop. Corp. v. *Moloney Elec. Co.*, 175 F. Supp. 250 (W. D. Ky. 1959)	12
Kershaw v. *Kershaw Manufacturing Company*, 209 F. Supp. 447 (M. D. Ala. 1962)	12
Kiefer-Stewart Co. v. *Seagram & Sons*, 340 U. S. 211	2, 6, 8

PAGE

Moore v. *Mead's Fine Bread Co.*, 340 U. S. 944 and 348 U. S. 115 ..... 2, 6, 8

Pennsylvania Water & P. Co. v. *Consolidated G. E. L. & P. Co.*, 209 F. 2d 131 (4th Cir. 1952), *cert. den.* 347 U. S. 960 ..... 10, 12

United States v. *Paramount Pictures*, 334 U. S. 131 ..... 2, 3, 4, 5, 6, 7

STATUTES

Section 5 of the Clayton Act, 38 Stat. 731, 15 United States Code Section 16 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

TWENTIETH CENTURY-FOX FILM CORPORATION, FOX WEST COAST THEATRES CORPORATION, FOX WEST COAST AGENCY CORPORATION and NATIONAL THEATRES CORPORATION, *Petitioners,* *—against—* SAMUEL GOLDWYN, FRANCIS HOWARD GOLDWYN, SAMUEL GOLDWYN, JR., JAMES A. MULVEY, and BEN FISH, doing business as GOLDWYN PRODUCTIONS, a limited partnership, successors in interest to the plaintiff Samuel Goldwyn Productions Inc., *Respondents*	No. 1135

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO CERTIORARI

Statement

Respondent's brief in opposition to the petition for a writ of certiorari advances no valid reason why the writ should not issue. Although the decision of the Ninth Circuit below is, as we have shown, in conflict with decisions of other circuits, respondents* would overcome the question of conflict among the

*Respondents were not plaintiffs in the District Court. A Goldwyn-controlled and dominated company, Samuel Goldwyn Productions, Inc., as the producer of some of the pictures involved and as purported assignee of other Goldwyn companies which produced others of such pictures, was the plaintiff. Respondents, therefore, are generally referred to as Goldwyn, Mr. Goldwyn himself being the first named of the respondents.

circuits by the bland assertion that none exists. These conflicts, which are real and deep, can not be disposed of by evasion. Yet that is all respondents offer. Otherwise, Goldwyn's opposition to the petition reduces itself to three main propositions.

The first is that the plaintiff below was not really a participant in and beneficiary of the *Paramount* case conspiracy because such plaintiff, Samuel Goldwyn Productions, Inc., was not itself a party to the *Paramount* case. The point is raised for the first time that some meaningful distinction exists between Mr. Goldwyn and the corporations which he admittedly had organized, dominated and controlled. There is no merit to this contention. In addition, it is a fact that the Goldwyn pictures were treated by the Government as having been utilized as a part of and as the beneficiaries of the conspiracy complained of. Moreover, by definition, both Mr. Goldwyn and his companies were excluded from the class of "independents", for whose benefit the Government case was instituted.

The second proposition is that Mr. Goldwyn not only was not a participant in or beneficiary of the conspiracy found in *Paramount* but that he "aided and assisted" the Government. This assertion is without merit and deserves but little consideration.

The third proposition is that Goldwyn is not precluded from recovering, even though he was a participant in and beneficiary of the conspiracy found in the antecedent Government action, because, it is asserted, this Court has held that "pari delicto" is no defense (Br. p. 17). This is a plain misreading of the decisions of this Court in *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211, and *Moore* v. *Mead's Fine Bread Co.*, 340 U. S. 944 and 348 U. S. 115. Those decisions have no relevance because the facts in both cases not only were different from those present in this case but the cases are in no way contrary to the cases cited in the petition or with the

landmark decision of this Court in *Eastman Co.* v. *Southern Photo Co.*, 273 U. S. 359.

ARGUMENT

1. Goldwyn and the Goldwyn Companies Were not Independent Producers within the Meaning and Definitions of the *Paramount* Case

In its brief in opposition to the petition for certiorari Goldwyn has raised for the first time the claim that there is some controlling distinction between himself as a producer who was originally named as a defendant in the *Paramount* case and the plaintiff in the District Court, Samuel Goldwyn Productions, Inc. Throughout the trial Goldwyn, the Goldwyn pictures and the Goldwyn companies were treated as one and the same so far as the proceedings in the *Paramount* case were concerned. No contention was made below that any significance attached to the fact that it was Mr. Goldwyn who had been a party to the *Paramount* case and not the plaintiff, Samuel Goldwyn Productions, Inc.

The specious nature of the point is indicated by other admitted facts. Plaintiff itself seems not to have been in business as a producer of any pictures prior to November 11, 1946, when it entered into contract with RKO for the distribution of pictures (App. C, pp. 523-38c). It is also a fact that a majority of the Goldwyn pictures here involved were produced before that time. Further, plaintiff was but one of a number of corporations used by Goldwyn for tax purposes or otherwise. It was undisputed that Mr. Goldwyn himself was the majority stockholder who dominated and controlled not only the plaintiff corporation but the other producing companies which had assigned their purported claims to plaintiff.

In any event, the relationship between Goldwyn and his corporations is without significance here. For not only Mr. Goldwyn but also the plaintiff Samuel Goldwyn Productions,

Inc., and all the other Goldwyn companies were excluded from the status of "independent producer" by the precise definitions contained in the *Paramount* case petition and amended complaint. It takes no subtleties of reasoning, as respondents attempt, to equate Mr. Goldwyn with Samuel Goldwyn Productions, Inc., so far as Section 5 of the Clayton Act, 38 Stat. 731, 15 United States Code, Section 16, is concerned. Neither was an independent in the sense that the plaintiff in the *Eagle Lion* case,* for example, was an independent. Goldwyn and all the Goldwyn companies produced "motion pictures for release by a major distributor pursuant to a prior understanding or agreement with such major distributor". A major distributor was "a distributor which is a defendant herein or is controlled by a defendant herein" (*Paramount* case definition in paragraphs 15(b) and 16(b) of the amended complaint. App. C., pp. 165-66c). Plainly, by definition, the Government complaint treated all producers such as Goldwyn as affiliated with the major distributors and defendants in *Paramount*. It is not what Mr. Goldwyn himself says he was but what the Government alleged in its complaint he was—as well as his companies—that is determinative under Section 5 of the Clayton Act. Goldwyn was therefore excluded by definition from the class of independents which he now seeks to embrace.

In addition, regardless of whether Mr. Goldwyn and his companies are treated separately or collectively, it is undeniable that the *Goldwyn pictures*, by whoever produced, were regarded

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**Eagle Lion Studios* v. *Loew's Inc.*, 141 F. Supp. 658 (S. D. N. Y., 1956) affirmed, 248 F. 2d 438 (2nd Cir. 1957), affirmed, 358 U. S. 100. The decision of the Ninth Circuit is in direct conflict with that of the Second Circuit in *Eagle Lion* in that an admitted and conceded "independent" there was not allowed the benefits of Section 5 of the Clayton Act because nothing in that case was "distinctly put in issue and directly determined" in *Paramount*. In the case at bar an affiliated, major producer, by definition, seems to be accorded the benefits of Section 5 under the decision of the Court below. The *Eagle Lion* case is discussed in the petition at pages 36-39.

by the Government as forming an integral part of the distribution practices complained of and as being the beneficiaries of those practices.

The disclaimer of control over United Artists Corporation and RKO Radio Pictures, Inc., is an irrelevant fact, if fact it be (Br. p. 4). Petitioners have never asserted that Mr. Goldwyn was more than an equal (that is, one-fifth) owner of United Artists or that he exercised dominion and control over RKO. The important consideration is that Mr. Goldwyn retained absolute control over the sales policies and distribution practices relating to his own pictures, whether released by United Artists or RKO (petition, p. 47). The Government, of course, relied upon the Goldwyn pictures and the distribution practices concerning them to prove its charges.

There is understandably no record citation for the claim that plaintiff "produced films, and by force of economic necessity, distributed them through RKO Radio Pictures, Inc." (Br. p. 3). There is not a scrap of evidence to that effect in the record. Indeed, there was no evidence whatever that Goldwyn was in any way dissatisfied with the efforts of United Artists or RKO in the distribution of his pictures.

2. The Government Received No Aid or Assistance from Goldwyn in Its Prosecution of the *Paramount* Case

Whatever significance such a contention might have here, it is really too much for Mr. Goldwyn to say that he "aided and assisted the Government in the prosecution of the *Paramount* case" (Br. p. 10). It is apparently a fact that in August, 1943, Mr. Mulvey of the Goldwyn organization met with Assistant Attorney General Clark of the anti-trust division (App. C. 515-521c). Mr. Mulvey's inter-office memorandum to Mr. Goldwyn, however, merely outlines complaints against three affiliates of Paramount Pictures Inc., two large

non-affiliated circuits and independent exhibitors. There is nothing in that communication about the defendants here. Whatever the nature of the meeting, Mr. Goldwyn's assistance or aid was not availed of by the Government at the trial in the fall of 1945, when Mr. Justice Clark was Attorney General.

And, for whatever reason Mr. Mulvey made his visit to the Department of Justice, it can not be gainsaid that the visit was made long after the petition and amended and supplemental complaint in *Paramount* were filed. Following that visit and whatever else may have transpired, including the *amicus* brief filed by the Society of Independent Motion Picture Producers concerning the relief to be granted in *Paramount*, the Government never at any time sought to amend its complaint to withdraw any of the definitions which by their terms precluded both Goldwyn and the Goldwyn companies from any class of "independents" for whose benefit the *Paramount* case was instituted. As we know, the case proceeded to trial with the Government relying in large part upon practices involving the distribution of the pictures produced by Mr. Goldwyn or his companies as proof of its charges of discrimination against independents. Whether Mr. Goldwyn, in effect, wanted to turn "state's evidence" is of no moment. The charges against him and his class of producers were never withdrawn.

3. As a Participant in and Beneficiary of the Conspiracy Found in the *Paramount* Case Goldwyn May Not Recover Against the Petitioners Here

Goldwyn cites two decisions by this Court in 1951 as the reason why this action may be maintained against the defendants, even though Goldwyn was a participant in and beneficiary of the *Paramount* case conspiracy. *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211, and *Moore* v. *Mead's*

Service Co., 340 U. S. 944. In referring to those cases, Goldwyn says that this Court "has repeatedly held that 'pari delicto' or 'unclean hands' is no defense" to an action for treble damages (Br. p. 17). As this Court will readily see, this is reading entirely too much into those decisions. Both of them are different from the case at bar.

In this case, as we have seen, Goldwyn and his companies were by definition affiliated with the defendants in the *Paramount* case, both being excluded by the definitions of the petition and amended complaint from any class of "independents". The pictures produced by Goldwyn were always distributed through a *Paramount* case defendant. It was the same conspiracy charged in *Paramount* with which Mr. Goldwyn, his companies and his pictures were involved. If the Goldwyn-produced pictures were utilized, or were charged by the Government as having been utilized, as part of this conspiracy to discriminate against independents, Goldwyn was as much a part of the conspiracy charged and found in *Paramount* as were his agents RKO and United Artists. We know, of course, that there were many such instances, as noted in the petition at pages 12-18 and more fully in Appendices B and C. We also know that Goldwyn and his pictures were pointed to by the Government in *Paramount* as the beneficiaries of the practices complained of in that case.

The differences between the case at bar and *Kiefer-Stewart* are apparent. There the defendants Seagram and Calvert, affiliated companies, refused to sell to Kiefer-Stewart because it refused to maintain *maximum resale prices*. This Court held, as it has done from the earliest days, that any attempt to set or maintain prices of any sort was a *per se* violation of the anti-trust laws. Concerning that, this Court said (p. 213):

> ". . . We reaffirm what we said in *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 223: 'Under the Sherman Act a combination formed for the purpose

> and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*.'"

It was no defense, therefore, that Kiefer-Stewart and others were parties to another and separate agreement to maintain *minimum resale prices*. The conspiracy among plaintiff and others to sell at higher prices could not have injured the manufacturers, that is, distillers, if their sales were not diminished thereby, since they still received the manufacturer's prices. It was the buying public which was injured by Kiefer-Stewart and its co-conspirators. It was the Government's responsibility to bring an action against them. Such unlawful conduct, however, did not make lawful the agreement between Seagram and Calvert to hold the line on maximum resale prices.

In *Moore* v. *Mead's Service Co.*, 340 U. S. 944, the case was sent back for further consideration in the light of the *Kiefer-Stewart* decision. When the case returned to this Court as *Moore* v. *Mead's Fine Bread Co.*, 348 U. S. 115, there was no element in the decision of this Court relating to participation or acquiescence in an unlawful boycott by Moore against Mead. The case turned upon violation by Mead of Section 2(a) of the Clayton Act and Section 3 of the Robinson-Patman Act. This Court held that the price cutting and underselling by Mead was for the purpose of destroying a local business and to obtain an unlawful competitive advantage. Such conduct violated the statutes set out above.

There is no indication in either *Kiefer-Stewart* or *Mead's Fine Bread* that the traditional view expressed in the cases referred to in the petition at pages 47-54 is not the correct view—that is—that a participant in, and beneficiary of a conspiracy may not recover against his co-participants and conspirators. Indeed, in one of the most important anti-trust decisions ever rendered, this Court expressly approved an instruction by the District Court that plaintiff could not recover if it were *in pari*

delicto with defendant. *Eastman Co.* v. *Southern Photo Co.*, 273 U. S. 359. In that case, this Court said (pp. 376-78):

> "The defendant—while conceding that the loss of anticipated profits from the destruction or interruption of an established business may be recovered where the amount of the loss is made reasonably certain by competent proof, *Central Coal & Coke Co.* v. *Hartman* (C. C. A.), 111 Fed. 96, 98—contends that there was a lack of competent proof of such damages in that the profits earned by the plaintiff during the preceding four years in which it had been a customer of the defendant, were improperly used as a standard by which to measure the damages sustained by the plaintiff during the period covered by the suit, since during such preceding years it had participated in the defendant's unlawful acts in furtherance of the monopoly and was *in pari delicto*.
>
> "There was, as stated by the Court of Appeals, evidence from which the jury could justly reach the conclusion that the plaintiff was not a party to the monopoly *in pari delicto* with the defendant, and that the plaintiff had complied with the defendant's restricted terms of sale merely for the reason that otherwise it could not purchase or secure the goods necessary in the conduct of its business. There was also affirmative evidence, not contradicted, tending to show that under the defendant's restricted terms of sale the dealers' profits did not exceed those on the sale of goods of other manufacturers not parties to the monopoly.
>
> "The jury was instructed, in substance, that if, during the preceding period in which the plaintiff had been a customer of the defendant, it had not merely bought goods from the defendant because of a business necessity, but, with a knowledge of the defendant's purpose to monopolize, had knowingly and willfully helped to build up the monopoly, it was *in pari delicto*, and hence could not recover any damages whatever on account of the defendant's refusal to continue to sell it

goods; and, further, that even if the plaintiff had not been a party to the monopoly, it could not recover damages on the basis of the profits which it had earned while a customer of the defendant to the extent that they had been increased by the monopoly and exceeded those in a normal business, but that they must be reduced to the basis of normal profits.

"We find, under the circumstances of this case, nothing in these instructions of which the defendant may justly complain. See *Ramsay Co.* v. *Bill Posters Assn.*, 260 U. S. 501, 512. The statement in *Victor Talking Mach. Co.* v. *Kemeny* (C. C. A.), 271 Fed. 810, 819, on which the defendant relies was based on the assumptions that the plaintiff had not only been a party to the unlawful combination, but that his earlier profits had exceeded those which "he could earn lawfully in a competitive market." And in *Eastman Kodak Co.* v. *Blackmore* (C. C. A.), 277 Fed. 694, 699, the substance of the holding was that the profits made by the plaintiff during an earlier period ending in 1902, in which he had actively participated in the unlawful combination, could not be set up as the standard of the profits which he would have realized in a much later period commencing in 1908."

In the thirty-seven years since the decision in *Eastman* was rendered, this Court has never had occasion to question its validity.

None of the lower courts, moreover, appears to have accepted the extreme view here advocated by Goldwyn. In *Pennsylvania Water & P. Co.* v. *Consolidated G. E. L. & P. Co.*, 209 F. 2d 131, *cert. den.* 347 U. S. 960, the Fourth Circuit (Circuit Judges Parker, Soper and Dobie) had before it a contention by the plaintiff that it had suffered damages as a result of defendant's violation of the anti-trust laws. The District Court held that plaintiff was *in pari delicto* with defendant and, therefore, could not recover. The appeal was

heard after the decision of this Court in the *Kiefer-Stewart* case. The differences between the parties grew out of a contract between them dated June 1, 1931. That agreement was subsequently declared to be in violation of the anti-trust laws. 186 F. 2d 934 (4th Cir. 1951). On the appeal in that action plaintiff contended that the doctrine of *in pari delicto* was no longer a defense to a private action for damages growing out of an anti-trust violation. Plaintiff relied principally upon the decisions of this Court in *Kiefer-Stewart* and *Mead's Service Co.* In declining to follow plaintiff's contention and holding that it could not recover, the court (Circuit Judge Soper) said (pp. 133-134):

> "We do not so understand these decisions, for in none of them were the plaintiff and the defendant parties to the same illegal conspiracy or agreement on which the suit was based. * * * There is no parallel with the situation in the case at bar in which the plaintiff and defendant were parties to the same illegal conspiracy.
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> "In Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., a wholesaler of liquor brought suit under the anti-trust acts against certain distillers who had conspired to sell liquor to wholesalers only on the condition that they would resell at prices fixed by the distillers. It was held that this agreement violated the anti-trust statutes, and that it was no defense to the suit that the wholesalers had entered into an agreement with other wholesalers to set a minimum price at which the liquor sold by them should be resold by the retailers. The court said that if the wholesalers were themselves guilty of infractions of the law, they could be held responsible therefor, but that this conduct did not legalize the unlawful combination of the distillers.
>
> "In Moore v. Mead Service Co. a baker brought suit against others in a similar business who had entered into an illegal agreement to reduce the price of their bread in the city in which the plaintiff's bakery

was located but at no other place where they sold their products. This agreement was made to offset a previous agreement between the plaintiff and certain retailers of bread in the city in which they agreed to buy only from him. It was held by the lower courts that both of these agreements were illegal and since the plaintiff himself was a party to the last mentioned agreement he could not recover from the defendants. This decision was reversed by the Supreme Court on the authority of the decision in Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., and it was subsequently determined that the plaintiff was entitled to recover from the defendants. Here again the plaintiff was not a party to the illegal agreement which formed the basis of his suit, and hence the situation does not parallel that in the pending suit.

"We are satisfied that it was not the intention of the Supreme Court to overrule the doctrine firmly established in earlier cases. Consequently it must be given effect in this action."

In accord with the interpretation of the decisions in *Kiefer-Stewart* and *Mead's Service Co.* by the Fourth Circuit in the *Pennsylvania Water* case are the following decisions by the District Court: *H. & A. Selmer, Inc.* v. *Musical Instrument Exchange,* 154 F. Supp. 697 (S. D. N. Y. 1957); *Kentucky Rural Elec. Coop. Corp.* v. *Moloney Elec. Co.,* 175 F. Supp. 250 (W. D. Ky. 1959) and *Kershaw* v. *Kershaw Manufacturing Company,* 209 F. Supp. 447 (M. D. Ala. 1962). As Judge Soper concluded in the *Pennsylvania Water* case, this Court in *Kiefer-Stewart* did not overrule the doctrine firmly established in the earlier cases cited in the petition.

CONCLUSION

For all the reasons stated in the petition and in this reply brief, we respectfully submit that this Court should grant the petition and issue a writ of certiorari to the United States Court

of Appeals for the Ninth Circuit to review and settle the questions here presented.

Respectfully submitted,

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